Attachment 7

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc.	)	WC Docket No. 08-33
In the Matter of the Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc.	)	WC Docket No. 08-185

INTRADO COMMUNICATIONS OF VIRGINIA INC.
REQUEST TO REFRESH THE RECORD AND
FURTHER REQUEST FOR EXPEDITED TREATMENT

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Its Attorneys

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INTRADO COMMUNICATIONS OF VIRGINIA INC.
REQUEST TO REFRESH THE RECORD AND
FURTHER REQUEST FOR EXPEDITED TREATMENT

Intrado Communications of Virginia Inc. ("Intrado Comm"), by its attorneys, respectfully submits this request to refresh the record in the above-captioned consolidated arbitration proceeding[1] and renews its request for the Wireline Competition Bureau ("Bureau") of the Federal Communications Commission ("FCC" or "Commission") to promptly resolve the pending arbitrations[2] between Intrado Comm and Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Embarq"), and Intrado Comm and Verizon South Inc. and Verizon Virginia Inc. (collectively, "Verizon").

[1] *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, Embarq)*; *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc. (collectively, Verizon)*, 23 FCC Rcd 17867 (2008) (consolidating the arbitrations).

[2] 47 C.F.R. § 1.41 (permitting informal requests for action to be made). Along with several Virginia counties, Intrado Comm filed its first request for expedited treatment September 30, 2009.

It has been nearly eighteen (18) months since Intrado Comm filed its petition for arbitration against Embarq and more than twelve (12) months since Intrado Comm filed its petition for arbitration against Verizon and the two proceedings were consolidated.[3] During that time, Intrado Comm's advanced (IP-based, next generation) 911/E911 service being provided to public safety answering points ("PSAPs"),[4] enterprise and telematics customers, and to other carriers and service providers, has continued to be developed and expanded to meet these customers' requests and perceived public interest needs.[5] The Commission has long recognized that "even minor delays or restrictions in the interconnection process can represent a serious and damaging business impediment to competitive market entrants."[6] The Commission has also

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[3] Intrado Comm filed its original petition for arbitration against Embarq with the Virginia State Corporation Commission on November 27, 2007. Intrado Comm petitioned the Bureau for arbitration of its interconnection disputes with Embarq on August 13, 2008 after the Virginia commission declined to arbitrate and this Commission issued an order preempting the authority of the Virginia commission. *See Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, Embarq)*, 23 FCC Rcd 8715 (2008). Intrado Comm filed its original petition for arbitration against Verizon with the Virginia commission on March 5, 2008. Intrado Comm petitioned the Bureau for arbitration of its interconnection disputes with Verizon on December 15, 2008 after the Virginia commission declined to arbitrate and this Commission issued an order preempting the authority of the Virginia commission. *See Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc. (collectively, Verizon)*, 23 FCC Rcd 15008 (2008). The arbitrations were consolidated on December 9, 2008. *See supra* n.1.

[4] For ease of reference, Intrado Comm uses the term "PSAP" to refer to any public safety agency, 911 authority, 911 administrative agency, or other entity that may be responsible for purchasing and/or receiving 911/E911 services to ensure consumers living in the relevant geographic area can reach emergency responders.

[5] The evolving nature of carrier services is well-established. *See, e.g., Applications of Guam Cellular and Paging, Inc. and DoCoMo Guam Holdings, Inc., For Consent to Transfer Control of Licenses and Authorizations*, 21 FCC Rcd 13580, ¶ 32 (2006) (noting that companies may gain "certain competitive advantages by distinguishing itself in the marketplace, such as by offering new services or products" and that the introduction of "new services . . . may benefit consumers"); *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, et al.*, 20 FCC Rcd 14853, ¶ 40 (2005) ("as with any evolving technology, new products and providers will continue to emerge to complement existing market offerings and participants"); *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, As Amended*, 14 FCC Rcd 14409, ¶ 29 (1999) (recognizing that carriers will introduce new and improved services and products in a competitive market).

[6] *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures To Be Followed when Formal Complaints Are Filed against Common Carriers*, 13 FCC Rcd 17018, ¶ 3 (1998).

emphasized the importance of a full and robust record.[7] These two factors combined with numerous other legal and regulatory events dictate the need for swift action on Intrado Comm's arbitration petitions. It is in this spirit that Intrado Comm makes this filing to update the record and renew its request for expedited treatment in this consolidated arbitration proceeding.

As explained in more detail below, the varying responses of incumbent local exchange carriers ("ILECs") to Intrado Comm's request for 251(c) interconnection and the lack of resolution by the FCC on the issues pending in the consolidated arbitrations has resulted in conflicting state commission decisions, as well as two pending federal court appeals, on the issue of whether Intrado Comm is entitled to interconnection pursuant to Section 251(c) of the Communications Act of 1934, as amended ("Act"). Several other states are waiting to issue rulings until the FCC addresses the pending arbitrations, plus others have indicated that their previous rulings may be subject to modification based on the FCC's decision. In short, it is necessary for the FCC to exercise its plenary jurisdiction[8] to put an end to this growing controversy and inconsistent application of federal law.

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[7] *See, e.g., Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc., and for Expedited Arbitration, et al*., 17 FCC Rcd 27039, ¶ 19 (2002) ("*FCC Arbitration Order*").

[8] The Commission's jurisdiction over these matters goes well beyond its authority under Sections 251 and 252 of the Act. *See, e.g.*, 47 U.S.C. § 151 (directing the FCC to utilize the nation's wire and radio infrastructure to promote the safety of life and property); *Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶ 36 (2005) ("*VoIP 911 Order*") (recognizing "the Commission's statutory obligation to promote an effective nationwide 911/E911 emergency access system"); Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (1999) (directing the establishment of a "seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs"); 47 U.S.C. § 157nt. (directing the FCC to encourage the deployment of "advanced telecommunications capability to all Americans"); *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 13 FCC Rcd 24011, ¶¶ 69-77 (1998) (interpreting Section 706 as a directive to further Congress's objective of opening all telecommunications markets to competition, including the market for advanced services). More detail on the Commission's overarching authority on 911 issues can be found in Intrado Comm's comments and reply comments previously filed in this proceeding. *See* WC Docket Nos. 08-33, 08-185, Comments of Intrado Inc. and Intrado Communications of Virginia Inc. (filed July 6, 2009) (**Attachment 4**); Reply Comments of Intrado Inc. and Intrado Communications of Virginia Inc. (filed July 21, 2009) (**Attachment 5**).

Swift action is also necessary to protect the public interest. Customers are being denied the ability to exercise their right to obtain services from a competitive 911/E911 service provider. Intrado Comm has signed contracts with at least one customer in Virginia where life-saving deployment is being delayed because of lack of interconnection, and other potential Virginia customers have participated in successful trials with Intrado Comm.[9] In other states, several public safety agencies have selected Intrado Comm[10] as their 911 service provider. The provision of Intrado Comm's 911 services to these customers has been thwarted by a variety of challenges created by the ILECs, including claims that 911 service is not "telephone exchange service" despite the ILECs' own treatment of these services as local exchange services since their inception.[11] This is the threshold issue currently pending before the Bureau in the consolidated arbitrations.

Accordingly, Intrado Comm provides the following information to update the record and to further support its request for immediate action on the consolidated arbitration proceeding. The Bureau's efforts to quickly address Intrado Comm's petitions will promote the goals of competition as well as the development and implementation of advanced emergency service

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[9] *See, e.g.*, WC Docket Nos. 08-33, 08-185, Request for Expedited Treatment (filed September 30, 2009) (**Attachment 3**); WC Docket Nos. 08-33, 08-185, Letter from William D. Sleeper, Pittsylvania County, Virginia, to Honorable Julius Genachowski, Chairman, FCC (filed Oct. 19, 2009) (requesting that the FCC expedite action concerning the interconnection arrangements between Intrado Comm, Embarq and Verizon and emphasizing the need for increased competition in the 911/E911 market) (**Attachment 2**).

[10] Virginia law requires a company to create a separate corporate entity to provide competitive local exchange services in Virginia. In every other state, "Intrado Comm" refers to Intrado Communications Inc., the regulated competitive local exchange carrier ("CLEC") offering services in that state.

[11] ILEC-provided 911 services have historically been classified as local exchange or telephone exchange services because 911 is typically viewed as local in nature, which is reflected by the inclusion of the service in the ILECs' local exchange tariffs with their other telephone exchange services. *See infra* Section III.A. (discussing current ILEC tariffed 911 offerings); *see also The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, 12 FCC Rcd 5572, ¶ 42 (1997) (finding 911 calls "are typically intrastate"); *id.* ¶ 58 ("most individual N11 calls are likely to be intrastate"). 911 service is the epitome of telephone exchange or local exchange service because the 911 caller needs the closest emergency responder to answer the call for assistance.

capabilities that incorporate broadband and Internet protocol-based technologies.[12] Prompt resolution of these issues will also further the Commission's stated goals of promoting public safety communications and ensuring that all American consumers have access to the world's most advanced telecommunications services.[13]

I. IMMEDIATE FCC ACTION IS NEEDED TO ENSURE INTRADO COMM OBTAINS THE UNIFORM, NATIONWIDE INTERCONNECTION ARRANGEMENTS IT NEEDS AND TO ADDRESS CONFLICTING STATE DECISIONS AND THE POSSIBILITY OF ADDITIONAL INCONSISTENT COURT RULINGS

In addition to the consolidated arbitrations currently before the Bureau, beginning in November 2007, Intrado Comm initiated nineteen (19) other arbitration proceedings in ten (10) states against several ILECs -- Verizon, Embarq, AT&T, Cincinnati Bell, and CenturyTel. Because Intrado Comm's Intelligent Emergency Network® is designed to be a nationwide network, Intrado Comm will need interconnection with all ILECs controlling access to the public switched telephone network ("PSTN"), not just the ILECs in Virginia. These arbitrations have resulted in inconsistent state commission decisions, two pending federal court appeals, and numerous "stayed" proceedings awaiting the outcome of the instant consolidated arbitrations. FCC action in the consolidated arbitrations is therefore necessary to ensure Intrado Comm can obtain the interconnection arrangements it needs to provide competitive 911/E911 services on a uniform, nationwide basis.

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[12] *See, e.g., A National Broadband Plan for Our Future*, 24 FCC Rcd 4342, ¶ 75 (2009) (asking "[w]hat broadband policies would best promote the deployment of next generation (NG 911) networks, including emergency services IP networks"); *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, FCC 09-68, Statement of Commissioner Copps (Aug. 27, 2009) (noting that one of the "critical challenges facing our country" is improvements in "public safety by enhancing the capabilities of our first responders").

[13] Written Statement of Commissioner Meredith A. Baker, Federal Communications Commission, before the Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet, U.S. House of Representatives, at 1 (Sept. 17, 2009); *see also* The National E9-1-1 Implementation Coordination Office, "A National Plan for Migrating to IP-Enabled 9-1-1 Systems" (September 2009) (recognizing that rules and regulations must ensure a smooth transition from the legacy system to an IP-enabled 911 system, including addressing issues such as technology platforms, interconnection, system pricing, funding mechanisms, and certification).

A. The Status of Intrado Comm's Other Arbitration Proceedings Demonstrates the Need for Commission Action

While Intrado Comm has strived to update the Bureau on these proceedings in its bi-weekly and now monthly status reports, the following comprehensive overview of these proceedings demonstrates the need for immediate resolution of the pending arbitration issues, which are squarely within the FCC's jurisdiction.[14] The varying negotiation and arbitration tactics of the ILECs are, in many respects, a driving force behind the dramatically different state commission interpretations of federal law discussed below, and the resulting confusion only serves the ILECs' desire to preserve and protect their monopolies. The FCC must exercise its broad authority and expertise over these federal issues to ensure that divergent state regulation does not undermine the intended public interest benefits of the Act.

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[14] While Intrado Comm understands that action taken by the Bureau in these consolidated arbitrations is viewed as the Bureau standing in the shoes of the Virginia State Corporation Commission, the Bureau's decision has the force of law and will be looked at by the state commissions (as well as the federal courts) as precedential authority. *See, e.g.*, Massachusetts D.T.E. 02-45, *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration To Establish an Interconnection Agreement with Verizon New England, Inc. d/b/a Verizon Massachusetts f/k/a New England Telephone & Telegraph Co. d/b/a Bell Atlantic-Massachusetts*, Order at 12-13 (Dec. 12, 2002) ("As a general rule, the Department does not find other state commission decisions to be dispositive on proceedings conducted in Massachusetts. . . . But, the Virginia Order is unique. . . . we nonetheless find it reasonable to place greater weight on the Wireline Competition Bureau's interpretation on the intent and application of FCC rules than we would another state commission's interpretation of the same FCC rules, which we view as merely instructive."); Pennsylvania Docket A-310814F7000, *Petition of US LEC of Pennsylvania, Inc. for Arbitration with Verizon Pennsylvania Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Opinion and Order at 17 (Apr. 17, 2003) (finding "reasoning and the result [are] consistent with the determination[s] of the full FCC"); *MCIMetro Access Transmission Serv., Inc. v. Bellsouth Telecommunications, Inc.*, 352 F.3d 872, 881 (4th Cir. 2003) ("When a federal agency delegates its decision-making authority to a subdivision and Congress has expressly permitted such delegation by statute, the decision of the subdivision is entitled to the same degree of deference as if it were made by the agency itself. . . . [W]e accord it the same deference as if it had been rendered by the FCC itself."); *Indiana Bell Telephone Co., Inc. v. McCarty*, 362 F.3d 378, 386 (7th Cir. 2004) (finding that the Bureau's "pronouncement on this issue [is] not only persuasive, . . . but one requiring deference as the voice of the FCC interpreting its own rules"); *MCI Telecommunications Corp. v. Ohio Bell Telephone Co.*, 376 F.3d 539, 550 (6th Cir. 2004) ("We are not aware of FCC authority to the contrary and we are convinced, as was the Seventh Circuit, that the Bureau's decision is not only persuasive, but also entitled to deference under *Chevron.*") This is especially true with respect to the interpretation of 47 U.S.C. § 153(47), which is within the exclusive jurisdiction of the FCC. *See, e.g., U.S. West Communications, Inc. v. Public Service Comm'n of Utah*, 75 F. Supp. 2d 1284, 1287 (D. Utah 1999) ("[I]f the FCC were to act for a state commission that did not accept its responsibilities under the Act, a reviewing court would give deference to the FCC, as a federal agency, under *Chevron*."), *abrogated on other grounds, as recognized by Southwestern Bell Telephone Co. v. Apple*, 309 F.3d 713, 717 n.5 (10th Cir. 2002); *Indiana Bell Telephone Co., Inc. v. McCarty*, 362 F.3d 378, 387 (7th Cir. 2004) (citing *U.S. West Communications, Inc.* with approval).

Conflicting Decisions. There have been five (5) states to issue arbitration decisions that address whether Intrado Comm offers "telephone exchange service" as defined in the Act[15] and is therefore entitled to Section 251(c) interconnection, an issue which is directly before the Bureau in the consolidated arbitrations. Specifically, the Ohio commission has ruled four (4) times in favor of Intrado Comm in arbitration proceedings against Embarq,[16] Cincinnati Bell,[17] AT&T,[18] and Verizon,[19] and the North Carolina commission has ruled in Intrado Comm's favor regarding its right to interconnection under 251(c) in its arbitration proceeding with AT&T.[20] AT&T has appealed both the Ohio and North Carolina arbitration decisions to federal district court.[21]

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[15] 47 U.S.C. § 153(47).

[16] Ohio Case No. 07-1216-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Award (Sept. 24, 2008) ("*Ohio Embarq Arbitration Award*"); Entry on Rehearing (Dec. 10, 2008) ("*Ohio Embarq Rehearing Order*").

[17] Ohio Case No. 08-537-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Arbitration Award (Oct. 8, 2008) ("*Ohio CBT Arbitration Award*"); Entry on Rehearing (Jan. 14, 2009) ("*Ohio CBT Rehearing Order*").

[18] Ohio Case No. 07-1280-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with the Ohio Bell Telephone Company dba AT&T Ohio*, Arbitration Award (Mar. 4, 2009) ("*AT&T Ohio Arbitration Award*"); Entry on Rehearing (June 17, 2009) ("*AT&T Ohio Rehearing Order*").

[19] Ohio Case No. 08-0198-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North Inc.*, Arbitration Award (June 24, 2009) ("*Verizon Ohio Arbitration Award*"), Entry on Rehearing (Sept. 15, 2009) ("*Verizon Ohio Rehearing Order*").

[20] North Carolina Docket P-1187, Sub 2, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, with BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina*, Recommended Arbitration Order (April 24, 2009) ("*North Carolina RAO*"); *adopted and modified by* Order Ruling on Objections and Requiring the Filing of a Composite Agreement (Sept. 10, 2009).

[21] *See* 09-CV-00918-ALM-MRA, *The Ohio Bell Telephone Company v. Public Utilities Commission of Ohio, et al.*, Complaint for Declaratory and Injunctive Relief (S.D. Ohio filed Oct. 15, 2009); Case 5:09-cv-00517-BR, *BellSouth Telecommunications, Inc. d/b/a AT&T North Carolina v. Finley, et al.*, Complaint for Declaratory and Injunctive Relief (E.D.N.C. filed Dec. 2, 2009).

On the other hand, the Florida commission has denied Intrado Comm 251(c) interconnection in its arbitration proceedings with AT&T[22] and Embarq,[23] but ruled Intrado Comm is entitled to a "commercial agreement" under 251(a).[24] The Illinois commission has issued a similar decision in Intrado Comm's arbitration with AT&T.[25] Finally, arbitrators in Texas have issued decisions denying Intrado Comm Section 251(c) interconnection in its arbitration proceedings with AT&T[26] and Verizon,[27] but likewise concluded Intrado Comm is entitled to an interconnection agreement under 251(a).[28]

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[22] Florida Docket No. 070736-TP, *In re: Petition by Intrado Communications Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with BellSouth Telecommunications, Inc. d/b/a AT&T Florida, pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162, F.S., and Rule 28-106-201, F.A.C.*, Final Order (Dec. 3, 2008) ("*AT&T Florida Order*"); Final Order Denying Motion for Reconsideration (Mar. 16, 2009) ("*AT&T Florida Recon Order*").

[23] Florida Docket No. 070699-TP, *Petition by Intrado Communications, Inc. for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Embarq Florida, Inc., pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, F.S.*, Final Order (Dec. 3, 2008) ("*Embarq Florida Order*"); Final Order Denying Motion for Reconsideration (Mar. 16, 2009) ("*Embarq Florida Recon Order*").

[24] *AT&T Florida Order* at 7 (indicating Intrado Comm can obtain interconnection "through the use of a commercial agreement or AT&T's tariffs"); *Embarq Florida Order* at 8 (stating that "the parties may negotiate a commercial agreement pursuant to §251(a)"). As discussed below, the ability of a CLEC to negotiate a mutually beneficial interconnection arrangement with an ILEC in order to provide a competitive service offering where no competition exists today, *i.e.*, 911 services, is not a negotiation in the traditional sense because the CLEC has no bargaining power. Where the CLEC has no bargaining power, it is at the mercy of the ILEC. This is the primary reason 251 was enacted -- to eliminate barriers to competitive entry and ensure consumers would realize the benefits of competition. *See supra* Section I.B.; *see also Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, 20 FCC Rcd 19415, ¶¶ 85-86 (2005) (finding that eliminating interconnection-related obligations would give ILECs "the ability to exercise market power over interconnection").

[25] Illinois Docket No. 08-0545, *Intrado Inc. Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Arbitration Decision (Mar. 17, 2009) ("*AT&T Illinois Order*"). The Illinois commission determined that there was nothing "to preclude Intrado from requesting interconnection under subsection 251(a), from requesting negotiation of issues associated with such interconnection (or issues pertaining to any other matters governed by 251(a)), or from requesting arbitration before [the Illinois] commission." *Id.* at 25.

[26] Texas Docket 36176, *Petition of Intrado Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Southwestern Bell Telephone Company d/b/a AT&T Texas*, Order on Threshold Issue No. 1 and Granting AT&T's Motion for Summary Decision (Nov. 23, 2009) ("*AT&T Texas Order*"). This decision is not yet final. Intrado Comm filed a motion for reconsideration on December 28, 2009, and AT&T responded on January 8, 2010. The item is set for consideration by the Texas commission during its January 29, 2010 agenda meeting.

Each of the five (5) state commissions attempted to interpret[29] FCC rulings assessing whether other types of services qualified as "telephone exchange services" under the Act.[30] While each commission reviewed the same set of FCC decisions, the results are inconsistent - Ohio and North Carolina correctly interpreted and applied the FCC's prior decisions, but Florida, Illinois and Texas reached contradictory conclusions based on those same decisions. Many of the state commissions addressing Intrado Comm's arbitration petitions acknowledged the existence of the consolidated arbitrations,[31] and the Illinois commission specifically found that action by the Bureau on the consolidated arbitrations may require its decision that denied Intrado Comm rights under Section 251(c) to be modified.[32]

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[27] Texas Docket 36185, *Petition of Intrado Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with GTE Southwest Incorporated d/b/a Verizon Southwest*, Order on Threshold Issue No. 1 and Denying Relief Requested in Petition (Nov. 23, 2009) ("*Verizon Texas Order*"). Intrado Comm filed a motion for reconsideration on December 28, 2009, and AT&T responded on January 8, 2010. The item is set for consideration by the Texas commission during its January 29, 2010 agenda meeting.

[28] *AT&T Texas Order* at 24 (finding "interconnection between Intrado and AT&T will be governed by FTA § 251(a) and (b), not FTA § 251(c)"); *Verizon Texas Order* at 23 (ruling that Intrado "is entitled to interconnect with Verizon pursuant only to FTA § 251(a) and (b), through a commercial agreement, not through an ICA").

[29] Indeed, one state claimed that the FCC had not addressed the statutory classification of 911 services. *See AT&T Illinois Order* at 6 ("The FCC has not commented on whether stand-alone 911 service like Intrado's is telephone exchange service.").

[30] For example, the two decisions on which the state commissions significantly relied were the FCC's 1999 *Advanced Services Order* and its 2001 *Directory Assistance Order*. *See Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 15 FCC Rcd 385 (1999) ("*Advanced Services Order*"); *Provision of Directory Listing Information under the Telecommunications Act of 1934, as Amended*, 16 FCC Rcd 2736 (2001) ("*Directory Assistance Order*").

[31] *See, e.g., AT&T Texas Order* at 5 ("the FCC has granted Intrado's request and preempted the Virginia Corporation Commission in two arbitrations that address the same issues involved in the instant docket, although the FCC has not yet ruled on the merits"); *Embarq Florida Order* at n.6 (recognizing that "a similar issue" is present in the consolidated arbitrations before the FCC); *AT&T Illinois Order* at 20 (discussing the consolidated arbitration proceeding).

[32] *See, e.g., AT&T Illinois Order* at 20-21, n.70 ("The FCC's Wireline Competition Bureau will issue a decision and it will resonate among the state Commissions (including this one) . . . the Bureau's decisions are accorded considerable persuasive weight and frequent citation by the state commissions.").

Stayed Arbitrations. In light of the consolidated arbitration proceeding, Intrado Comm's arbitration proceedings with Verizon in Delaware,[33] Florida,[34] Illinois,[35] and North Carolina[36] have been stayed pending a decision from the Bureau on whether Intrado Comm offers telephone exchange service and is therefore entitled to Section 251(c) interconnection. Thus, there will be no further action in these four (4) proceedings until the Bureau acts on the threshold issue in the consolidated arbitration proceeding, and in the meantime, advanced 911 services will be withheld from the citizens of those four (4) states living in Verizon's service territory.

Resolved Arbitrations. Intrado Comm's arbitration proceedings with Verizon in West Virginia, Massachusetts, and Maryland have been resolved without the issue of whether Intrado Comm provides telephone exchange service being addressed.[37] The issue was not previously raised by either Intrado Comm or Verizon due to Verizon's agreement not to contest Intrado Comm's right to a Section 251(c) interconnection agreement for the provision of its competitive

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[33] Delaware PSC Docket No. 08-61, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon Delaware LLC.*

[34] Florida Docket No. 080134-TP, *Petition by Intrado Communications, Inc. for arbitration to establish an interconnection agreement with Verizon Florida LLC, pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Section 364.162, F.S.*

[35] Illinois Docket No. 08-0550, *Petition of Intrado Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North Inc. and Verizon South Inc.*

[36] North Carolina Docket No. P-1187, Sub 3, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. d/b/a Verizon North Carolina*.

[37] West Virginia Case No. 08-0298-T-PC, *Intrado Communications Inc. and Verizon West Virginia Inc., Petition for Arbitration pursuant to § 252(b) of 47 U.S.C. and 150 C.S.R. 6.15.5*, Arbitration Award (Nov. 14, 2008) ("*West Virginia ALJ Award*"), approved by Commission Order (Dec. 16, 2008); Massachusetts D.T.C. 08-9, *Petition for Arbitration of an Interconnection Agreement between Intrado Communications Inc. and Verizon New England Inc. d/b/a Verizon Massachusetts*, Arbitration Order (May 8, 2009) ("*Massachusetts Arbitration Award*"); Maryland Case No. 9138, *Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon Maryland Inc*., Proposed Order of Hearing Examiner (Nov. 13, 2009) ("*Maryland Verizon Order*"), made final effective Dec. 15, 2009.

911/E911 services.[38] Indeed, Verizon stated on numerous occasions in other state arbitration proceedings, it "agreed to negotiate and arbitrate an interconnection agreement with Intrado on the same basis it does with any CLEC."[39] Although Verizon attempted to belatedly raise the issue in its testimony and briefs, these three (3) state commissions found that the issue had not been properly raised and thus they were barred from addressing it pursuant to Section 252(b)(4)(A) of the Act,[40] which limits a state commission's consideration of issues in an arbitration to those raised in the petition and the response.[41]

B. FCC Action Is Necessary to Establish a Uniform, Nationwide Regime for Competitive 911/E911 Interconnection Arrangements

Action by the Bureau on the consolidated arbitration proceeding will resolve the controversy among the states discussed above.[42] In the absence of such action and direction from the FCC, Intrado Comm will continue to be plagued by state commission decisions based

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[38] WC Docket No. 08-185, Petition for Arbitration at 15 (filed December 15, 2008) ("Intrado Comm Petition for Arbitration against Verizon") ("The most notable difference between the two dockets is that the issue of whether Intrado Comm is entitled to a Section 251(c) interconnection agreement is not an issue in the Verizon proceeding.").

[39] *See, e.g.*, West Virginia Case No. 08-0298-T-PC, Verizon Direct Testimony at lines 172-74 (filed Sept. 9, 2008); *see also* Maryland Case 9138, Verizon Hearing Exhibit 1, Direct Testimony on behalf of Verizon Maryland at 9, lines 1-4 (noting that Intrado Comm "approached Verizon as a CLEC and Verizon agreed to negotiate and arbitrate an interconnection agreement with Intrado on the same basis it does with any CLEC"); Massachusetts DTC 08-9, Verizon Hearing Exhibit 1, Direct Testimony on behalf of Verizon Massachusetts at 7, lines 20-21 (filed Dec. 29, 2008) (noting that Intrado Comm "approached Verizon for negotiation of an interconnection agreement as any other CLEC would"); Delaware Docket No. 08-61, Direct Testimony on behalf of Verizon Delaware LLC at 9, lines 168-70, 173-75 (filed Nov. 3, 2008) ("Verizon agreed to negotiate and arbitrate an interconnection agreement with Intrado on the same basis it does with any CLEC. . . . Verizon's position here is that it will provide Intrado the same interconnection and other services it provides to any CLEC").

[40] *West Virginia ALJ Award* at 16-17 (noting that it would not address the issue given that it was not squarely raised by the parties and Verizon had waived the issue by entering into interconnection agreement negotiations with Intrado Comm); *Massachusetts Arbitration Award* at 17 (finding, in contrast to Intrado Comm's previous arbitrations with AT&T and Embarq, the "threshold" issue was not a disputed issue in Verizon's arbitration proceedings with Intrado Comm and thus, determining that, "[b]ecause the Parties did not present the 'threshold' issue as a disputed issue to the Department, pursuant to § 252(b)(4)(A) of the Act, the Department is therefore precluded from addressing Intrado's entitlement to § 251(c) interconnection in the instant proceeding"); *Maryland Verizon Order* at 8 ("Verizon appears to have waived the threshold eligibility issue").

[41] 47 U.S.C. § 252(b)(4)(A).

[42] Bureau action would also provide further direction to the two federal courts poised to review the Ohio and North Carolina commissions' interpretation of federal law.

on faulty reasoning and erroneous interpretations of federal law. The Commission therefore has a duty to act immediately and exercise its exclusive jurisdiction to resolve the issues raised by the pending arbitrations.[43]

Further, the continued lack of action is drastically hindering Intrado Comm's ability to deploy its nationwide services state-to-state or even across ILEC geographic territories within a state where there are variations in arbitration results within a state.[44] A competitor without any bargaining power simply cannot negotiate a mutually beneficial agreement with the carrier that controls the PSTN and currently provides 911 services as a monopoly as the FCC has recognized on numerous occasions.[45] When CLECs initially sought to avail themselves of the benefits of Section 251, local competition already existed in some markets as a result of the FCC's pre-1996 Expanded Interconnection rulings and pro-competitive state actions.[46] Competition in the

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[43] Intrado Comm's previous filings provide more detail on the Commission's exclusive jurisdiction to resolve the issues raised in the consolidated arbitration proceeding. *See* WC Docket Nos. 08-33, 08-185, Comments of Intrado Inc. and Intrado Communications of Virginia Inc. (filed July 6, 2009) (**Attachment 4**); Reply Comments of Intrado Inc. and Intrado Communications of Virginia Inc. (filed July 21, 2009) (**Attachment 5**).

[44] The FCC has declared on multiple occasions that Section 230(b) of the Act supports preemption of state commission jurisdiction where differing regulations would undermine the promotion of the types of advanced services to be offered by Intrado Comm. *See* 47 U.S.C. § 230(b)(2) ("It is the policy of the United States to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."); *Petition for Declaratory Ruling that pulver.com's Free World Dialup Is Neither Telecommunications Nor a Telecommunications Service*, 19 FCC Rcd 3307, ¶ 18 (2004) (finding Section 230(b)(2) expresses Congress's clear preference for a national policy to accomplish the objective set forth in that section); *Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission*, 19 FCC Rcd 22404, ¶ 34 (2004) (recognizing that Section 230(b)(2) provides support for preventing state attempts to promulgate regulations that would thwart the objective set forth in that section).

[45] *Local Competition Order* ¶¶ 15, 41, 134 (noting "significant imbalances in bargaining power" and how the "statute addresses this problem by creating an arbitration proceeding in which the new entrant may assert certain rights" to equalize this bargaining power because it is the new entrant's objective to obtain services and access to facilities from the incumbent and thus "has little to offer the incumbent in a negotiation").

[46] *See, e.g.*, *Expanded Interconnection with Local Telephone Company Facilities*, 9 FCC Rcd 5154, ¶ 8 (1994) (recognizing that local competition should lead to more efficient operations, the deployment of "new technologies facilitating innovative service offerings, increase the choices available to access customers, and reduce the prices of services subject to competition"); *see also* New York Case 94-C-0095, *Proceeding on Motion of the Commission To Examine Issues Related to the Continuing Provision of Universal Service and To Develop a Regulatory Framework for the Transition to Competition in the Local Exchange Market*, Order Instituting Framework for Directory Listings, Carrier Interconnection and Intercarrier Compensation (Sept. 27, 1995); Connecticut Docket No. 94-10-02, *DPUC Investigation into the Unbundling of Southern New England Telephone Company's Local Telecommunications Network*, Decision (Sept. 1, 1995).

911/E911 services portion of the local market, however, does not exist today.[47] Interconnection negotiations for the arrangements necessary to provide competitive 911/E911 services therefore have proven to be significantly more challenging than the early negotiations for other types of local exchange services. This makes FCC action on Intrado Comm's arbitration petitions even more critical.[48]

II. LACK OF ACTION ON INTRADO COMM'S ARBITRATION PETITIONS IS PREVENTING CUSTOMERS FROM EXERCISING THEIR RIGHT TO CHOOSE THE CARRIER OF THEIR CHOICE AND DENYING THEM THE BENEFITS OF COMPETITION

The opening of the local exchange market to competition was "intended to pave the way for enhanced competition in all telecommunications markets, by allowing all providers to enter all markets."[49] The public safety market, whether callers or responders, however, are being denied the benefits of competition because competition for local services, in this case 911 services, requires the competitive provider to be interconnected with the PSTN, which the ILECs control.[50] By engaging in efforts to frustrate access to interconnection rights, the ILECs have managed to use the regulatory process to prevent competition in the 911 services market.[51] All

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[47] *VoIP 911 Order* at n.35 (noting that ILECs "own and operate most" of the wireline 911 network today).

[48] The Act is deliberately technology-neutral, and the interpretation of the rights and obligations conferred by the Act will continue to evolve as technology evolves. *See, e.g., GTE Service Corp. and GTE Data Services Inc. v. FCC*, 474 F.2d 724, 730-31 (2d Cir. 1973) ("The fact that the [Act] makes no reference to computers and data processing is not surprising. The [Act] was passed in 1934 and although there may have been academic concepts of the computer at that time, its commercial exploitation and impact on regulated communications carriers was certainly not evident. The courts, however, have uniformly and consistently interpreted the [Act] to give the [FCC] broad and comprehensive rule-making authority in the new and dynamic field of electronic communications."); *see also* 137 Cong. Rec. S18784 (1991) (statement of Sen. Hollings) ("The FCC is given the flexibility to consider what rules should apply to future technologies as well as existing technologies.").

[49] *Local Competition Order* ¶ 4.

[50] *Local Competition Order* ¶ 10 ("An [ILEC] also has the ability to act on its incentive to discourage entry and robust competition by not interconnecting its network with the new entrant's network or by insisting on supracompetitive prices or other unreasonable conditions for terminating calls from the entrant's customers to the [ILEC]'s subscribers.").

[51] *Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, 14 FCC Rcd 14712, ¶ 107 (1999)

customers, including public safety customers, are entitled to competitive choices and state-of-the art technologies.[52] The Act nowhere states that only some Americans are entitled to the benefits of competition. On the contrary, one of the main goals of Section 251 is to accelerate the rapid "deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition."[53]

The Commission has recognized that, "where competition is introduced, consumers benefit from lower prices, greater technological innovation, and additional consumer choice."[54] To facilitate competition, however, consumers must be able to switch service providers seamlessly with as little disruption as possible.[55] The Commission determined early on that competition could emerge in the local market only if it removed any and all barriers that might make consumers hesitate to switch providers.[56] The Commission knew that "elimination of these obstacles is essential if there is to be a fair opportunity to compete in the local exchange and exchange access markets."[57] In the interexchange market, competition exploded because

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("*SBC/Ameritech Merger Order*") (recognizing that ILECs have "an incentive to delay interconnection negotiations and resolution of interconnection disputes").

[52] *Petition of AT&T for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to its Broadband Services*, 22 FCC Rcd 18705, ¶ 12 (2007) (noting that interconnection obligations "foster the open and interconnected nature of our communications system, and thus promote competitive market conditions").

[53] *Local Competition Order* at n.18 (citing Joint Managers' Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 113 (1996)).

[54] *Telecommunications Services Inside Wiring; Customer Premises Equipment; Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Cable Home Wiring*, 13 FCC Rcd 3659, ¶ 27 (1997).

[55] *Local Competition Order* ¶ 16, n.11; *see also Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 18 FCC Rcd 5099, ¶ 18 (2003) (adopting procedures "to prevent anti-competitive practices by all parties involved in the carrier change process, and promote competition and choice in telecommunications by ensuring that the ability to choose and change carriers is seamless and efficient").

[56] *Local Competition Order* ¶ 16; *see also Implementation of the Subscriber Carrier Selection Change Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, 18 FCC Rcd 5099, ¶ 17 (2003) (finding that creating "unnecessary burdens on customers seeking to make carrier change requests . . . can impede consumer choice").

[57] *Local Competition Order* ¶ 18.

consumers could quickly switch from one carrier to another, and the Commission understood it would "be essential to fair local competition" that consumers be able to move "from one local carrier to another rapidly."[58]

To date, however, the public safety community has not had the opportunity to experience the intended benefits of competition, and there is ample evidence that many agencies are sitting back, hesitating, waiting to see whether the Commission will honor and protect competition in the 911/E911 market. For example, at least one county in Virginia has selected Intrado Comm as its 911 service provider, and several others have indicated interest in Intrado Comm's services.[59] Similarly, several Florida counties (PSAP customers) have selected Intrado Comm as their 911 service provider.[60] These PSAP customers have executed letters of agency and contracts for services with Intrado Comm for it to serve as the 911 service provider for these PSAP customers. The counties also notified their current providers (the ILECs serving the relevant geographic area) that they were switching carriers and would be transitioning all of their 911 services to Intrado Comm, and requested that the ILEC work cooperatively with Intrado Comm to implement the change. Further, two additional counties in Verizon's service territory (one in North Carolina and one in Pennsylvania) have also selected Intrado Comm as their 911 service provider.

Intrado Comm, however, has been unable to fully initiate services for its actual and potential customers because it has not been able to obtain mutually beneficial interconnection

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58 *Local Competition Order* ¶ 18.

59 *See, e.g.*, Letter from William D. Sleeper, Pittsylvania County, Virginia, to Honorable Julius Genachowski, Chairman, FCC (filed Oct. 19, 2009) (requesting that the FCC expedite action concerning the interconnection arrangements between Intrado Comm, Embarq and Verizon and emphasizing the need for increased competition in the 911/E911 market) (**Attachment 2**); WC Docket Nos. 08-33, 08-185, Request for Expedited Treatment (filed September 30, 2009) (**Attachment 3**).

60 *See, e.g.*, Affidavit of Joe Laviano, Martin County, Florida (**Attachment 1**).

arrangements to provide its competitive 911/E911 services.[61] Intrado Comm's inability to obtain this type of interconnection arrangement undermines these public safety customers' decisions to choose Intrado Comm as their 911 service provider and denies them the benefits of competition.[62] Indeed, Pittsylvania County, Virginia has specifically asked the Commission to expedite action on the consolidated arbitrations so that Intrado Comm can fulfill its contractual obligations to provide 911 service to the county.[63] Public safety agencies' confidence in their ability to deploy Intrado Comm's advanced 911 services erodes with protracted regulatory uncertainty. Ultimately, public safety agencies cannot rely on a competitive provider of 911/E911 services without sufficient assurances that the competitive provider has the necessary interconnection arrangements in place with other carriers to ensure all 911 callers can reach the

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[61] Denying Intrado Comm mutually beneficial interconnection arrangements is only one method the ILECs are using to prevent, delay, and erect barriers to competition for 911 service. For example, in the District of Columbia, Verizon claimed it should be able to continue charging PSAPs for certain 911 components even though Verizon no longer provided those components to the PSAP. If such a practice were permitted, no PSAP would switch to a competitive provider for fear of being double-billed - once by Verizon and once by the competitive provider - for the same components. Recognizing the fallacy of Verizon's arguments, the District of Columbia commission found that Verizon was only permitted to charge for those components that were necessary to the provision of 911 service to the PSAP and thus Verizon could not charge for components that were no longer necessary. *See* DC Formal Case No. 1040, *Investigation into Verizon Washington, DC Inc.'s Universal Emergency Number 911 Service Rates in the District of Columbia*, Order No. 15631 (Dec. 18, 2009); *see also* Florida Docket No. 090089-TP, *Petition for Declaratory Statement Regarding Local Exchange Telecommunications Network Emergency 911 Service, by Intrado Communications Inc.*, Order No. PSC-08-0374-DS-TP (June 4, 2008) ("The law is clear that telecommunications companies may not charge for services they do not provide. Section 364.604(2) provides that '[a] customer shall not be liable for any charges for telecommunications or information services that the customer did not order or that were not provided to the customer.'").

[62] Not only is the continued inaction on Intrado Comm's arbitration petitions denying these counties the benefits of competition, but some Florida counties may lose much needed funding for new and innovative 911 services. Some Florida counties received fund grants from the Florida E911 Board to upgrade their 911 services and purchase services and equipment from Intrado Comm. If Intrado Comm is unable to initiate services for these counties due to the lack of interconnection, the counties may be required to return their grant funds. It is unclear whether the Florida E911 Board, of which the ILECs are members, will continue to grant the counties additional time to utilize their grants currently designated for the purchase of Intrado Comm's services. For example, Martin County, Florida had to make a second request for an extension of time to use its grant funds during the Florida E911 Board's October 2009 meetings. *See* Affidavit of Joe Laviano, Martin County, Florida (**Attachment 1**). Similarly, St. Lucie County (another Intrado Comm customer in Florida) received its third extension of time to use its grant funds during the Florida E911 Board's December 2009 meeting. *See* Florida E911 Board Meeting Minutes, *available at* http://dms.myflorida.com/media/cits_media/florida_e911_files/florida_e911_future_meetings_files/e911_board_meetings.

[63] WC Docket Nos. 08-33, 08-185, Letter from William D. Sleeper, Pittsylvania County, Virginia, to Honorable Julius Genachowski, Chairman, FCC (filed Oct. 19, 2009) (**Attachment 2**).

appropriate public safety entity and that public safety agencies can communicate with each other.[64] Swift action by the Bureau confirming that the benefits of competition extend to all consumers, including consumers of 911 services, will ensure these consumers are no longer denied the benefits of competition intended by the Act.

III. INTRADO COMM'S SERVICE OFFERINGS MEET CONGRESSIONAL AND COMMISSION GOALS

Given the passage of time since its petitions for arbitration were filed, Intrado Comm takes this opportunity to refresh and update the record regarding its service offerings, which have evolved since the filing of its petitions for arbitration more than a year ago. The Commission has continuously strived to ensure the creation of a full and complete record,[65] and this filing therefore serves that purpose. As discussed in Intrado Comm's previous filings[66] and as further demonstrated below, Intrado Comm's service offerings meet Congressional and Commission goals for the promotion of competition and deployment of advanced services. Intrado Comm, however, must be provided with the tools necessary to meet these goals, namely efficient and mutually beneficial interconnection arrangements that account for the specialized nature of 911/E911 services.

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[64] *Local Competition Order* ¶ 13 (stating that facilities-based competitors "will need an agreement with the [ILEC] to enable the entrant's customers to place calls to and receive calls from the [ILEC]'s subscribers"). Thus, delayed or denied ILEC interconnection irreparably damages Intrado Comm's market entry and eventual business opportunities.

[65] *See, e.g., Indiana Community Radio Corp. and Pennyrile Christian Community, Inc. Application for a Construction Permit for a New Noncommercial Educational FM Station at Madisonville, Kentucky*, 23 FCC Rcd 10963, n.1 (2008) (accepting filings "in the interest of a full and complete record").

[66] *See generally*, WC Docket No. 08-33, Petition for Arbitration (filed Aug. 13, 2008) ("Intrado Comm Petition for Arbitration against Embarq"); WC Docket No. 08-33, Intrado Communications of Virginia Inc. Reply to Embarq Response to Petition for Arbitration (filed September 19, 2008); Intrado Comm Petition for Arbitration against Verizon; WC Docket No. 08-185, Reply of Intrado Communications of Virginia Inc. (filed January 29, 2009).

A. Intrado Comm's 911/E911 Services Provide Numerous Features and Functionalities

Intrado Comm's Intelligent Emergency Network® allows Intrado Comm to provide competitive 911 emergency call delivery and management services for both voice and data transmissions.[67] Intrado Comm's IP-based network is designed to be interoperable with existing legacy equipment and incumbent networks, but offers much more capability to use and receive calls from newer technologies. Intrado Comm's network is capable of accommodating and passing images, graphics, video and textual data, while the legacy 911 network is limited to simply voice and automatic number information ("ANI") signals (*i.e.*, commonly using multi-frequency analog tones).

In sum, Intrado Comm will use its Intelligent Emergency Network® to provide two primary types of 911 services with additional features or capabilities available depending on the needs of the customer.[68] These include:

- **911 service to PSAP end users** - this retail service allows Intrado Comm's PSAP end users to receive 911 calls from all 911 callers located in the geographic area served by the PSAP. As part of its 911 service to PSAPs, Intrado Comm offers several additional features and capabilities:
    - **PSAP-to-PSAP transfers** - provides PSAPs the ability to transfer 911 calls with automatic location information ("ALI") and ANI to any other PSAP served by Intrado Comm or to any PSAP served by another carrier assuming all necessary interconnection arrangements are in place with that carrier;
    - **Transfer of 911 calls to any 10-digit telephone number** - provides PSAPs the ability to transfer 911 calls to any 10-digit telephone number on the PSTN;

[67] Intrado Comm Petition for Arbitration against Verizon at 5; Intrado Comm Petition for Arbitration against Embarq at 6.

[68] Intrado Comm Petition for Arbitration against Verizon at 3 (stating Intrado Comm will serve public safety agencies, VoIP service providers and other communications providers); *id.* at n.12 (noting Intrado Comm will route 911 calls from end users of wireline, wireless, VoIP, and telematics service providers to the appropriate PSAP); Intrado Comm Petition for Arbitration against Embarq at 7 (noting Intrado Comm will serve PSAPs and other end users).

- **Three-way conference calling** - provides PSAPs the ability to conduct three-way conference calls with the 911 caller and other public safety entities;

- **Outgoing calling** - provides PSAPs the ability to activate outgoing calling capabilities to any 10-digit telephone number on the PSTN;

- **"Reverse 911"** - provides PSAPs the ability to offer emergency notification information to all 911 callers contained in the Intrado Comm E911 system database and located within a specific geographic area; and

- **Receipt of 911 Calls via Text Messaging** - provides PSAPs the ability to accept and respond to requests for emergency response received via text messaging.

- **911 access services**

  - **Retail** - provides enterprise and telematics customers a retail service that allows end users to dial 911 and reach the appropriate PSAP whether it is an Intrado Comm-served PSAP or an ILEC-served PSAP based on the 911 caller's location (instead of the location of the customer premise equipment managing the calls such as a private branch exchange or other customer call collection platform).

  - **Wholesale** - allows carriers and voice over Internet Protocol ("VoIP") service providers to access the appropriate PSAP for delivery of their end users' 911 calls.

    - **Transiting** - Transiting is an optional service for carriers/VoIP service providers that permits all of their 911 calls to be completed by Intrado Comm, including those destined for an ILEC-served PSAP.[69]

Both of these services and the features and functionalities available with each is discussed in more detail below.

First, Intrado Comm offers retail 911 services to PSAP end users. This service is a replacement service for the 911 services currently provided by ILECs today[70] and classified in

[69] When an Intrado Comm wholesale 911 customer's 911 caller needs to reach an ILEC-served PSAP, this equates to the completion of another carrier's transit traffic. Today, ILECs permit competitors to reach other third party providers connected to the ILEC. For example, an ILEC may be interconnected with carriers such as One Communications, Level 3, and Cox, but Cox may not have direct interconnection with One Communications and Level 3. The ILEC permits Cox to reach Level 3 and One Communications through the interconnection arrangements the ILEC has established with those other carriers. The ILEC charges a fee for Cox to transit the ILEC network to reach the other carriers. Intrado Comm will permit its wholesale customers' 911 callers to be transited to an ILEC-served PSAP. Intrado Comm also understands that some ILECs intend to transit 911 calls of their wholesale customers to Intrado Comm-served PSAPs.

[70] *VoIP 911 Order* ¶ 14 (noting that the "Wireline E911 Network generally has been implemented, operated, and maintained by a subset of [ILECs], and generally is paid for by PSAPs through tariffs").

ILEC tariffs as "telephone exchange service," "telephone exchange network service" or "Business Exchange Service."[71] Thus, the ILECs have offered the same, albeit less sophisticated, services for years as local exchange services for which pricing, terms and conditions of the service are set forth in the ILECs' local exchange tariffs. However, now when faced with competition for the first time, the ILECs have declared their monopoly service to be something other than telephone exchange service.[72]

Intrado Comm's competitive retail 911 service offers the complete end-to-end service for the PSAP, which includes the following components: the selective router, the connection between the selective router and the PSAP, the ALI database; the selective router database ("SRDB"); connections and access to the ALI database; and master street address guide

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[71] *See, e.g.*, United Telephone Southeast LLC, Tariff SCC No. 1, General Subscriber Services Tariff, Section U21.1, Original Page 1 (effective May 20, 2008) (stating Embarq's basic 911 service is "a telephone exchange service, whereby a Public Safety Answering Point (PSAP) designated by the customer may receive and answer, transfer and dispatch in response to public emergency telephone calls"); United Telephone - Southeast, Inc. Virginia, Tariff SCC No. 1, General Subscriber Services Tariff, Section U21.4, First Revised Page 3 (effective July 10, 2008) (stating Embarq's E911 service is "a telephone exchange network service which utilizes a computerized system to automatically route emergency telephone calls placed by dialing the digits '911' to the proper public safety answering point serving the jurisdiction from which the emergency telephone call was placed"); Central Telephone Company of Virginia, Tariff SCC No. 1, General Subscriber Services Tariff, Section 24.2.1, First Revised Page 1 (effective July 20, 2007) ("Universal Emergency Number 911 Service is classified as Business Exchange Service"); Verizon Virginia Inc. Miscellaneous Service Arrangements Tariff, 14A. Emergency 911 Services, Original Page 10 (effective July 1, 2005) ("E9-1-1 Service is classified as a Business Exchange Service"); Verizon South Inc., General Customer Services Tariff, Section S22.5.1.3, Original Page 9 (effective July 1, 2005) ("E9-1-1 Service is classified as a Business Exchange Service").

[72] Treating Intrado Comm differently than other 911 service providers impermissibly discriminates against Intrado Comm in violation of federal law, which supports regulatory parity among providers because, "in a market where carriers are offering the same services and competing for the same customers, disparate treatment of different types of carriers or types of traffic has significant competitive implications" by giving other providers "a competitive advantage." *Developing a Unified Intercarrier Compensation Regime*, 20 FCC Rcd 4685, ¶ 21 (2005); *see also Appropriate Regulatory Treatment for Broadband Access to the Internet over Wireless Networks*, 22 FCC Rcd 5901, ¶ 53 (2007) (noting that the "disparate treatment" of competitors "would introduce competitive distortions into the marketplace"). Regulatory parity is important to ensure a level playing field. *See Bright House Networks, LLC et al. v. Verizon Cal., Inc. et al*., 23 FCC Rcd 5857, ¶ 30 (2008); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended*, 22 FCC Rcd 16304, ¶ 129 (2007) ("disparate treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers"). Disparate treatment between Intrado Comm and other 911 service providers undermines that goal.

("MSAG") services.[73] As part of its service offering, Intrado Comm offers several additional features that may be activated upon the request of the PSAP end user. One of these features is PSAP-to-PSAP transfer. This service allows Intrado Comm's PSAP customer to transfer a 911 call to another PSAP served by Intrado Comm or to PSAPs served by other 911 service providers with which Intrado Comm has obtained the necessary interconnection arrangements. Importantly, Intrado Comm's transfer service allows the ANI and ALI associated with the 911 caller to remain with the 911 call and to be displayed at the PSAP receiving the call transfer for use in dispatching first responders. While most PSAP-to-PSAP transfers involve a wireless 911 call, PSAP-to-PSAP transfers can be provided for wireline and VoIP 911 calls as well. Intrado Comm's network is also capable of receiving 911 calls transferred from PSAP customers served by other 911 service providers to an Intrado Comm-served PSAP customer assuming necessary interconnection arrangements are in place. Call transfer capabilities are extremely important to ensure misdirected 911 calls get delivered with ANI and ALI to the appropriate PSAP, which are more likely to occur with greater frequency given the substantial increase in the use of mobile technologies.[74]

Complementing the PSAP-to-PSAP transfer feature is the capability for Intrado Comm's PSAP customers to conduct three-way conference calls or transfer 911 calls to any 10-digit number within the PSTN. Specifically, with a 911 caller on the line, a PSAP call taker will be

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[73] *Cf. VoIP 911 Order* ¶ 15 (describing the components comprising the Wireline E911 Network).

[74] As many as thirty percent (30%) of all mobile 911 calls may be required to be transferred to the appropriate PSAP for proper emergency call response. *See, e.g.*, Fara Monroe, "911 Call Process May Cause Dangerous Delays," THE BRADENTON HERALD, June 15, 2006 (noting that 50-60 percent of all 911 calls in Florida come from wireless phones and in some jurisdictions of Florida, all wireless calls require re-routing); Julia Layton, "How 9-1-1 Works," www.howstuffworks.com (noting there is a 35 percent chance that a PSAP call taker has no precise information about a wireless 911 call); Sofia Santana, "Cell phone 911 calls are often routed to the wrong call centers," SOUTH FLORIDA SUN-SENTINEL, June 21, 2008 ("Cell phone 911 calls often get routed to the wrong 911 centers because of the location of cell phone towers. This leads to delays in sending help because operators have to figure out where a caller is and which police or fire department should respond, and then transfer the call to that jurisdiction.").

able to press a button or perform a "hook flash" on the telephone and obtain a second dial tone. The call taker can then dial another telephone number and create a conference bridge between the original caller, the PSAP call taker, and the added party. The PSAP call taker also has the ability to exit the conference and allow the original 911 caller and the added party to continue their communication. The PSAP call taker line is then freed to receive another incoming 911 call.

Intrado Comm PSAP customers who chose to use IP connectivity to receive emergency calls from the Intrado Comm Intelligent Emergency Network® will also be capable of making outgoing calls with Intrado Comm's 911 service. This optional feature is available with an Intrado Comm IP interface and the interface must be tested with the PSAP customer premises equipment ("CPE") to ensure compatibility. Once the Intrado Comm interface has been found to be compatible with the PSAP CPE, the service will be configured to allow a PSAP call taker to press a single button on the CPE to obtain dial tone and originate a call to any 10-digit telephone number within the PSTN. The existence of an in-progress call will not be necessary for the PSAP to use this feature.

Intrado Comm also offers its PSAP customers emergency notification services or "reverse 911" upon request.[75] This service provides Intrado Comm's PSAP customers the ability to provide outbound emergency notification messaging to all telephone subscribers within the area served by the PSAP. The notification service gives Intrado Comm's PSAP customer the ability to originate calls to potential 911 callers within a selected geographic area in order to efficiently and quickly disseminate important emergency information.

[75] The Ohio commission required Intrado Comm to amend its tariff to include outbound emergency notification messaging once the service is requested from any Ohio county Intrado Comm serves. *See* Ohio Case No. 07-1199-TP-ACE, *Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Finding and Order at Finding 16 (Feb. 5, 2008).

Finally, Intrado Comm provides its properly equipped PSAP customers with the ability to accept and respond to calls for emergency assistance sent via text messaging.[76] This capability enables the PSAP call taker to intercommunicate with texting parties using their wireless Short Message Signaling ("SMS") feature via a message sent using the "9-1-1" universal short code. The PSAP call taker receives a "call back" number and/or "text back" mechanism, all of which is delivered via the E911 network to the appropriate PSAP based on the pre-defined routing designation and the mobile switching center ("MSC") processing the text message.

Second, Intrado Comm offers wholesale 911 access services to other carriers and VoIP service providers. This service ensures that the 911 calls originated by the end users of other providers reach the appropriate PSAP,[77] whether that PSAP is served by Intrado Comm or served by another 911 service provider, which is referred to as transit 911 service. Intrado Comm aggregates and transports traditional and non-traditional emergency call traffic from end users of wireline, wireless, and VoIP service providers to the appropriate selective router for delivery to the appropriate PSAP depending on the geographic location of the end user making the 911 call. The appropriate PSAP may be Intrado Comm's PSAP customer or the PSAP customer of another 911 service provider.

Third, Intrado Comm offers retail 911 access services to enterprise and telematics customers. Enterprise customers include large business users utilizing multi-line telephone serving arrangements, such as a private branch exchange ("PBX") or other customer call collection platform, *e.g.*, large corporation or a business like OnStar. Intrado Comm's 911

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[76] *See, e.g.*, Iowa 9-1-1 Call Center First in Nation to Successfully Trial 9-1-1 Text Messaging, Press Release, *available at*: http://www.intrado.com/main/press/.

[77] *See, e.g.*, 47 C.F.R. § 9.7 (requiring any owner or controller of a capability that can be used for 911 or E911 service to make that capability available to a requesting interconnected VoIP service provider to ensure VoIP service providers' 911 callers can reach the appropriate PSAP).

access service enables end users to originate 911 calls that will identify the station number and location of the 911 caller (as opposed to the PBX or customer call collection center location) and have those calls delivered to the appropriate PSAP whether the PSAP is served by Intrado Comm or another carrier. 911 calls from enterprise and telematics customers are routed directly from the customer location to Intrado Comm's selective router for dissemination to the appropriate PSAP. While Intrado Comm provides all facilities, equipment, and services to the enterprise customer that are necessary for the service to function properly, the facilities to be provided may vary for each individual enterprise customer based on the specific needs of the enterprise customer.

B. Prompt Action on Intrado Comm's Arbitration Petitions Furthers Congressional and Commission Objectives

Deployment of Intrado Comm's services depends on obtaining efficient and mutually beneficial interconnection arrangements from the ILECs that currently control the 911 network as well as the majority of the PSTN.[78] Further delay in lifting the barriers to interconnection not only denies customers the benefits of competition, but undermines the Commission's objectives to promote broadband deployment.[79]

Chairman Genachowski has previously expressed a commitment to public safety as a "top priority" for the FCC, and has recognized that it is important for the FCC "to respond to

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[78] Intrado Comm Petition for Arbitration against Embarq, Attachment 1 at 3; Intrado Comm Petition for Arbitration against Verizon, Attachment 1 at 1.

[79] Intrado Comm has filed comments and reply comments in several of the Commission's broadband dockets (as well as in the instant proceeding) detailing how the competitive provision of 911 services, generally, and Intrado Comm's network and associated services, specifically, further the Commission's mandates to promote safety of life and property, support competition, and to advance nationwide broadband deployment. *See, e.g.*, GN Docket Nos. 09-51, 09-47, 09-137, Comments (filed Dec. 21, 2009); GN Docket No. 09-51, Notice of Ex Parte Communication (filed Dec. 10, 2009); GN Docket No. 09-51, Comments (filed Nov. 12, 2009); GN Docket No. 09-51, Comments (filed June 8, 2009); GN Docket No. 09-40, Comments (filed Apr. 13, 2009); *see also* WC Docket Nos. 08-33, 08-185, Comments of Intrado Inc. and Intrado Communications of Virginia Inc. (filed July 6, 2009) (**Attachment 4**); Reply Comments of Intrado Inc. and Intrado Communications of Virginia Inc. (filed July 21, 2009) (**Attachment 5**).

public safety communications needs" and "to work toward helping our country's first responders deploy 21st century technologies in support of their operational requirements."[80] In this regard, the Commission has acknowledged that "[b]roadband offers a variety of potential benefits to emergency responders and other public safety agencies" including the deployment of "Next Generation 911" services.[81] Intrado Comm's advanced 911/E911 services fulfill the goal of giving public safety the communications they need to transition to, and function in, a broadband-based world.[82] But as the Commission also has recognized, there are regulatory roadblocks that restrict the type of vigorous advanced 911 service deployment the Commission envisions.[83]

Since 1996, the Commission has recognized that interconnection is the linchpin to competition and the deployment of new and innovative services to consumers.[84] The advent of advanced 911 services is no different. Advanced 911 service providers need to interconnect with the ILECs (the current monopoly providers of the legacy wireline 911/E911 network) as well as with all other carriers offering their end users 911 calling capabilities.[85] Establishing mutually beneficial interconnection and interoperability arrangements with the ILECs is essential to

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[80] Written Statement of Julius Genachowski, Chairman, Federal Communications Commission, before the Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet, U.S. House of Representatives, at 3-4 (Sept. 17, 2009).

[81] *Additional Comment Sought on Public Safety, Homeland Security, and Cybersecurity Elements of National Broadband Plan*, NBP Public Notice #8, DA 09-2133 (rel. Sept. 28, 2009) ("*911 Broadband PN*").

[82] *Comment Sought on Transition from Circuit-Switched Network to All-IP Network*, NBP Public Notice #25, DA 09-2517 (rel. Dec. 1, 2009) (recognizing the "market-led transition in technology and services, from the circuit switched PSTN system to an IP-based communications world").

[83] *911 Broadband PN* at 2.

[84] *Local Competition Order* ¶ 10 ("absent interconnection between the [ILEC] and the entrant, the customer of the entrant would be unable to complete calls to subscribers served by the [ILEC]'s network"); *see also id.* ¶ 13 (stating that facilities-based competitors "will need an agreement with the [ILEC] to enable the entrant's customers to place calls to and receive calls from the [ILEC]'s subscribers").

[85] Congress and the Commission recognized the importance of interconnection in the 911 context when it required owners or controllers of capabilities that are used for 911 or E911 service to make those capabilities available to a requesting interconnected VoIP service provider to ensure VoIP service providers' 911 callers can reach the appropriate PSAP. *See, e.g.*, 47 C.F.R. § 9.7; *see also see also Implementation of the NET 911 Improvement Act of 2008*, 23 FCC Rcd 15884, ¶¶ 21-29 (2008).

ensuring that all American consumers, including public safety agencies, can benefit from the innovative capabilities and functionality broadband offers, including IP-based 911 systems. Swift action on Intrado Comm's arbitration petitions will ensure Americans can realize the full benefits of advanced 911 service offerings as envisioned by the Commission and Congress.

CONCLUSION

Public safety agencies have waited for years for the opportunity to take advantage of advanced 911/E911 technology. That opportunity has been available since May 2007 when Intrado Comm first requested interconnection with the ILECs, but regulatory delay is continuing to prevent many agencies from realizing the benefits of advanced 911/E911 technology, or in some cases, receiving the benefits too late to save the lives and property that could have otherwise been saved. For the foregoing reasons, Intrado Comm respectfully requests that the Bureau immediately resolve the pending consolidated arbitration proceeding.

Respectfully submitted,

/s/ Chérie R. Kiser

Chérie R. Kiser
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Dated: January 12, 2010

Its Attorneys

CERTIFICATE OF SERVICE

I, Angela F. Collins, certify that on this 12th day of January 2010, I served a copy of the foregoing on the following via the method indicated:

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Via ECFS

William Kehoe, Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Via Electronic Mail

Matthew Warner, Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
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Chairman Julius Genachowski
Priya Aiyar
Office of the Chairman
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Commissioner Michael Copps
Jennifer Schneider
Office of Commissioner Copps
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Washington, DC 20005
Via Electronic Mail

Katie Saunders
Verizon
1320 North Courthouse Road, 9th Floor
Arlington, VA 22201
Via Electronic Mail

/s/ Angela F. Collins
Angela F. Collins

Attachment 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

AFFIDAVIT OF JOE LAVIANO

I, Joe Laviano, state as follows:

1. I am the 911 Dispatch Manager/911 Coordinator for Martin County, Florida (the "County"). My business address is Martin County Sheriff's Office, 800 S.E. Monterey Road, Stuart, FL, 34994. I am responsible for the management and dispatch of 911 communications for Martin County, which has a population of approximately 138,000.

2. I make this affidavit in support of Intrado Communications Inc. ("Intrado Comm"). Specifically, this affidavit provides information on how Intrado Comm's lack of interconnection with incumbent local exchange carriers ("ILECs") like AT&T is affecting the County's request to obtain competitive 911 services from Intrado Comm and threatening the County's ability to use and retain state funds granted to the County for its 911 programs.

3. In the Emergency Communications Number E911 Act, the Florida legislature created an E911 grant program the purpose of which is to assist Florida counties with the installation of E911, Phase II, and next generation 911 systems. The grants are administered by the Florida E911 Board. Pursuant to Florida statutes, the E911 Board consists of nine (9) members, two of which must be local exchange carriers. Out of the two local exchange carriers, one must be the local exchange carrier having the greatest number of access lines in the state. Thus, AT&T is required to be a member of the Florida E911 Board. At this time, AT&T, CenturyLink (formerly known as Embarq), and Verizon are members of the E911 Board.

4. Under the rules of the grant program, counties receiving funds must implement services within one year from the receipt of the award or the county's ability to utilize the funds will be put in jeopardy. Extension requests may be made, but there is no guarantee that such requests will be approved and there are no established guidelines for granting such extension requests. Further, failure to have made any progress with respect to the use of the designated funds, such as establishing contracts or purchasing equipment, may result in rejection of an extension of time to implement funded services, which could require the county to return the funds.

5. Martin County requested and was granted funds from the Florida E911 Board for upgrade of its 911 systems, and specifically to purchase Intrado Comm's services and equipment. While the Grants Committee of the E911 Board ultimately granted Martin County's request for funds, the Grants Committee expressed its concern that, absent an interconnection arrangement between Intrado Comm and the incumbent provider, the County may be unable to implement its use of the grants in a timely manner as required by the rules.

6. Martin County is designated to receive 911 calls from callers served by AT&T, a rural ILEC, and other wireline, wireless, Voice over Internet Protocol ("VoIP"), and multi-line telephone systems ("MLTS") service providers. In connection with the grant received from the Florida E911 Board, Martin County executed a letter of agency and contract for services with Intrado Comm to serve as the County's 911 service provider. On November 25, 2008, the County notified AT&T that it was switching carriers and would be transitioning all of its 911 services to Intrado Comm. The County also requested that AT&T work cooperatively with Intrado Comm to implement the change.

7. In order for Intrado Comm to provide its competitive 911 service to the County, Intrado Comm must interconnect with the public switched telephone network ("PSTN") to which all 911 callers are connected. This interconnection must occur to ensure AT&T customers dialing 911 can reach Martin County's first responders where the County is designated to receive those 911 calls. Intrado Comm has been unable to initiate services for Martin County because it has not been able to obtain the necessary interconnection arrangements with AT&T.

8. In April 2009, the County requested an extension of time to utilize its 911 grant funds given Intrado Comm's ongoing interconnection disputes with AT&T. The County was granted an extension to October 2009.

9. At the E911 Board's October 2009 meeting, the County requested and was granted an additional six (6) months extension for use of its 911 grant funds for. If Intrado Comm does not obtain the necessary interconnection arrangements before that time, the County will be required to request a third extension. At this time, it is unclear whether the County will receive another extension or will be forced to return the grant funds to the E911 Board.

10. The ability of the County to get an extension is further complicated by the composition of the E911 Board in Florida as discussed above. The E911 Board does not include a member that represents the interest of competitive telecommunications providers. This, coupled with AT&T's power as an E911 Board member to potentially influence the Board against supporting measures to promote competitive options (such as granting further extensions of Martin County's grants), is a real concern.

11. Intrado Comm's inability to obtain interconnection with AT&T is significantly affecting the County's ability to upgrade its 911 system and provide the citizens of Martin County the most technologically advanced services available. Martin County has the right to

choose among providers and the right to move from one provider to another without unnecessary delay or inconvenience. AT&T's failure to interconnect with Intrado Comm is undermining the County's ability to exercise these rights and impeding the advent of competition in the Florida 911 market. Swift action to eliminate this long-pending barrier to competition is needed for the County to receive the intended benefits of competition.

I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Dated: 1/8/2010

Joe Laviano

Joe Laviano
911 Dispatch Manager/911 Coordinator
Martin County, Florida

Attachment 2

PITTSYLVANIA COUNTY
VIRGINIA

William D. Sleeper
County Administrator
P.O. Box 426
Chatham, Virginia 24531
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Phone (434) 432-7710
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Gretna/Hurt (434) 656-6211
Bachelors Hall/Whitmell (434) 797-9550

October 8, 2009

Honorable Julius Genachowski, Chairman
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Letter in Support for *Request for Expedited Treatment*
WC Docket Nos. 08-33 and 08-185

Dear Chairman Genachowski:

I, William Sleeper, serve as the County Administrator for the Pittsylvania County Administrator in Virginia. The Pittsylvania County Board of Supervisors unanimously resolved that the County has the right to select its 911 service provider and is requesting that the Federal Communications Commission ("FCC") promptly resolve the above-captioned arbitration proceedings so that Pittsylvania County may immediately obtain and receive the benefits associated with Intrado Communications Inc.'s competitive 911 services. The enclosed Resolution was unanimously approved on Monday, October 5, 2009 at the regular meeting of the Pittsylvania County Board of Supervisors.

Pittsylvania County is working with its selected provider, Intrado Communication Inc.,to install and deploy Next Generation 911 "end to end" call delivery services. This technology should be available for all PSAPs in the United States so that all telephony customers have access to the same capabilities when dialing 911. As you are aware, the importance of having a caller's exact location when dialing 911 is paramount to the successful delivery of the requested emergency services in a timely fashion.

Furthermore, having the latest technological advances in 911 services accessible for all citizens, regardless of their choice of telephone service provider, should be a primary concern and focus of all levels of government. The technology should be seamless, transparent and not cause delay in receiving the caller's voice and location of the emergency.

In closing, Pittsylvania County looks forward to being able to receive any and all calls for emergency assistance whether it is voice or text to 911. Please consider this resolution as we stand with Intrado Communications Inc. and the other Virginia Counties as listed in the *Request for Expedited Treatment*, filed in WC Docket Nos. 08-33 and 08-185 on September 30, 2009.

Very truly yours,

William D. Sleeper

William D. Sleeper
County Administrator

Cc: Honorable Mark Warner, US Senator for Virginia
Honorable Jim Webb, US Senator for Virginia
Honorable Tom Perriello, US House of Representatives, 5th District

PITTSYLVANIA COUNTY BOARD OF SUPERVISORS

RESOLUTION
2009-10-01

VIRGINIA: At the regular meeting of the Pittsylvania County Board of Supervisors held in the General District Courtroom of the Edwin R. Shields Courthouse Addition on Monday, October 5, 2009, the following resolution was presented and adopted:

WHEREAS, Pittsylvania County, along with Martinsville, Henry County, Franklin County and Patrick County, have selected Intrado Communications for introduction of new innovative 911 System Equipment in their Emergency Service Centers; and

WHEREAS, Intrado Communications has filed a petition for arbitration against Embarq of Virginia, Verizon South, Inc. and Verizon of Virginia, Incorporated in order to get the two telephone companies to work with Intrado to provide their 911 service into the Counties 911 System Dispatch Centers; and

WHEREAS, Intrado Communications filed a petition for arbitration on March 5, 2008 with the Virginia State Corporation Commission and after the Virginia Commission declined to arbitrate, the FCC issued an order preempting the authority of the Virginia Commission; and

WHEREAS, the Counties listed above have selected Intrado Communications to provide Next Generation E911 telephone delivery serivces, which are being preempted by the lack of interconnecting authority and ability between Verizon and Embarq; then

BE IT HEREBY RESOLVED, by the Pittsylvania County Board of Supervisors, requests the Federal Communication Commission to expedite action concerning the required interconnect between Intrado Communications and Embarq and Verizon Telephone Systems in Virginia to service Pittsylvania County in accordance with Section 222(b) of the Communication Act 1934, as amended in 1996, opening local exchange market competition; and

BE IT FURTHER RESOLVED, that the Pittsylvania County Board of Supervisors express its concern for the increased competition necessary for offering more competitive alternates to 911 Systems urging the Federal Communication Commission to move forward as quickly as possible to settle this arbitration petition.

Given under my hand this 5th day of October, 2009

Coy E. Harville, Chairman
Pittsylvania County Board of Supervisors

William D. Sleeper, Clerk to the Board

CERTIFICATE OF SERVICE

I, Rebecca Flippen, certify that on this 19th day of October 2009, I served a copy of the foregoing Letter of Support for Request for Expedited Treatment on the following via the method indicated:

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
Via ECFS

William Kehoe
Matthew Warner
Wireline Competition Bureau
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Katie Saunders
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Arlington, VA 22201
Via Electronic Mail

/s/ Rebecca Flippen
Rebecca Flippen

Attachment 3

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of the Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc.	)	WC Docket No. 08-33
In the Matter of the Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc.	)	WC Docket No. 08-185

REQUEST FOR EXPEDITED TREATMENT

Intrado Communications of Virginia Inc. ("Intrado Comm") and the Pittsylvania County Department of Emergency Management ("Pittsylvania DEM"), the Martinsville-Henry County Communications Center ("Martinsville-Henry Comm Center"), Franklin County E9-1-1 Communications ("Franklin Comm"), and the Patrick County E9-1-1 Office ("Patrick Office") (collectively, the "Virginia Counties") respectfully request the Wireline Competition Bureau ("Bureau") of the Federal Communications Commission ("FCC" or "Commission") to promptly resolve the above-captioned consolidated arbitration proceeding[1] so the Virginia Counties may

[1] *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, Embarq)*; *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc. (collectively, Verizon)*, 23 FCC Rcd 17867 (2008) (consolidating the arbitrations).

exercise their rights to obtain and receive the benefits associated with Intrado Comm's competitive 911 services.[2]

As explained in more detail below, some of the Virginia Counties have ordered service from Intrado Comm and others want to order Intrado Comm's services. The Virginia Counties and Intrado Comm are encouraged by Chairman Genachowski's commitment to public safety as a "top priority" for the FCC, and his recognition that it is important for the FCC "to respond to public safety communications needs" and "to work toward helping our country's first responders deploy 21st century technologies in support of their operational requirements."[3] It is in this spirit that this request for expedited treatment is made for FCC action in the consolidated arbitration. The Virginia Counties seek to avail themselves of the benefits of the Communications Act of 1934, as amended (the "Act"), by exercising their right as consumers to obtain services from a competitive provider offering a competitive alternative to the Virginia Counties' existing 911 service providers. The ability of the Virginia Counties to realize the benefits of competition, however, is being thwarted by Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Embarq") and Verizon South Inc. and Verizon Virginia Inc. (collectively, "Verizon").

FACTUAL BACKGROUND

Intrado Comm filed its original petition for arbitration against Embarq with the Virginia State Corporation Commission on November 27, 2007. After the Virginia commission declined to arbitrate and this Commission issued an order preempting the authority of the Virginia

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[2] 47 C.F.R. § 1.41 (permitting informal requests for action to be made).

[3] Written Statement of Julius Genachowski, Chairman, Federal Communications Commission, before the Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet, U.S. House of Representatives, at 3-4 (Sept. 17, 2009).

commission,[4] Intrado Comm petitioned the Bureau for arbitration of its interconnection disputes with Embarq on August 13, 2008. Intrado Comm filed its original petition for arbitration against Verizon with the Virginia commission on March 5, 2008. After the Virginia commission declined to arbitrate and this Commission issued an order preempting the authority of the Virginia commission,[5] Intrado Comm petitioned the Bureau for arbitration of its interconnection disputes with Verizon on December 15, 2008. The arbitrations were consolidated on December 9, 2008.[6]

Pittsylvania is the largest county in Virginia and covers almost 1000 square miles. The Pittsylvania DEM provides many services to the more than 61,000 citizens of the county, including E911 and the dispatching of fire, rescue, police, and other services to emergency situations. Currently, the Pittsylvania DEM receives its 911 services from Verizon (formerly Bell Atlantic). Recently, the Pittsylvania DEM requested to switch to Intrado Comm as its provider of 911 services, but Intrado Comm must first establish interconnection arrangements with Verizon to ensure the Pittsylvania DEM can receive all 911 calls designated for the DEM, including 911 calls dialed by Verizon customers.

The Martinsville-Henry Comm Center receives and dispatches emergency services for both the City of Martinsville, Virginia and the County of Henry in Virginia totaling approximately 60,000 residents. Franklin Comm serves approximately 51,000 residents. The Patrick Office provides emergency services to approximately 20,000 residents. Henry County

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[4] *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, Embarq)*, 23 FCC Rcd 8715 (2008).

[5] *Petition of Intrado Communications of Virginia Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Arbitration of an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc. (collectively, Verizon)*, 23 FCC Rcd 15008 (2008).

[6] *See supra* n.1.

shares a border with Patrick County to the west, Franklin County to the north, Pittsylvania County to the east, and North Carolina to the south. Currently, the Martinsville-Henry Comm Center, Franklin Comm, and Patrick Office all receive 911 services from Embarq. In 2009, the three counties participated in successful trials of Intrado Comm's competitive 911 service. These three counties want to switch to Intrado Comm for their 911services, but are concerned with the time it will take Intrado Comm to fully implement services given Intrado Comm's current lack of interconnection with Embarq.

The primary purpose of interconnection between competing carriers is to ensure that all Americans can exercise their right to choose a service provider and still receive calls from all other Americans regardless of their choice in service providers.[7] When mutually beneficial interconnection between carriers is not available, consumers are denied access to a subset of Americans, and thus the very foundation of the Act is undermined.[8] Most notably, while Embarq and Verizon are allowed to thwart competition, Virginia's citizens and the Virginia Counties are being deprived of the technologically advanced services available from Intrado Comm.[9]

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[7] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 10 (1996) ("*Local Competition Order*") (intervening history omitted), *aff'd by AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (stating "absent interconnection between the incumbent LEC and the entrant, the customer of the entrant would be unable to complete calls to subscribers served by the incumbent LEC's network"); *id.* ¶ 13 (stating that facilities-based competitors "will need an agreement with the incumbent LEC to enable the entrant's customers to place calls to and receive calls from the incumbent LEC's subscribers"); *see also Telecommunications Services Inside Wiring; Customer Premises Equipment; Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Cable Home Wiring*, 13 FCC Rcd 3659, ¶ 27 (1997) ("where competition is introduced, consumers benefit from lower prices, greater technological innovation, and additional consumer choice); GN Docket Nos. 09-157, 09-51, *Fostering Innovation and Investment in the Wireless Communications Market; A National Broadband Plan For Our Future*, Statement of Commissioner Mignon L. Clyburn (rel. Aug. 27, 2009) (stating that "greater competition and innovation. . . "inure to the benefit of the American consumer").

[8] 47 U.S.C. § 151.

[9] *See* WC Docket Nos. 08-33 and 08-185, Letter from Steve Marzolf, Integrated Services Program Director, Commonwealth of Virginia Wireless E-911 Services Board, to Marlene H. Dortch, Secretary, FCC (filed July 21, 2009) ("[The incumbents] have historically played such a key role because there was really no one else to provide those services. More recently, we have seen the emergence of other companies willing to provide E-911 services. Several innovations in E-911 services have actually been pioneered by these competitive service providers. They were instrumental in the implementation and success of wireless and VoIP E-911 services over the last few years.").

EXPEDITED ACTION IS APPROPRIATE AND NECESSARY

When Congress amended the Act in 1996 to open local exchange markets to competition, it established the Section 251/252 negotiation and arbitration process. Recognizing that incumbent local exchange carriers ("ILECs"), such as Embarq and Verizon, would have the incentive and the market power to thwart competition, Congress conferred upon competitive carriers not only a right to interconnect with the incumbent, but the right to do so on fair and pro-competitive terms.[10] Interconnection regulations have thus been developed to compensate for the uneven bargaining power that exists between competitors like Intrado Comm and incumbents like Embarq and Verizon.[11] For instance, Congress established a procedure for arbitration of any disputes arising from the negotiations between the ILEC and the competitor based on its recognition that commercial negotiations would be difficult because the new entrant would have "nothing that the incumbent needs" and so "has little to offer the incumbent in a negotiation."[12] Indeed, the Commission has specifically found that ILECs have "an incentive to delay interconnection negotiations and resolution of interconnection disputes."[13]

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[10] *Local Competition Order* ¶ 16 (stating that Section 251(c) interconnection was intended to facilitate "["[v]igorous competition," which Congress understood "would be impeded by technical disadvantages and other handicaps that prevent a new entrant from offering services that consumers perceive to be equal in quality to the offerings of [ILECs]."

[11] *Local Competition Order* ¶ 15 (the "statute addresses this problem [of the incumbent's "superior bargaining power"] by creating an arbitration proceeding in which the new entrant may assert certain rights"); *see also id.* ¶ 134 (noting that because it is the new entrant's objective to obtain services and access to facilities from the incumbent and thus "has little to offer the incumbent in a negotiation," the Act creates an arbitration process to equalize this bargaining power).

[12] *Local Competition Order* ¶ 134; *see also id.* ¶ 218 (recognizing that "[g]iven that the incumbent LEC will be providing interconnection to its competitors pursuant to the purpose of the 1996 Act, the LEC has the incentive to discriminate against its competitors by providing them less favorable terms and conditions of interconnection than it provides itself" and "[p]ermitting such circumstances is inconsistent with the pro-competitive purpose of the Act").

[13] *Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, 14 FCC Rcd 14712, ¶ 107 (1999) ("*SBC/Ameritech Merger Order*").

This recognition of the ILECs' "incentives and abilities" is one of the "basic cornerstones of modern telecommunications law," including the foundation for the inclusion of Sections 251 and 252 in the Act.[14] The framework of those statutory provisions was designed to protect competitive local exchange carriers from experiencing unreasonable delays in entering the marketplace formerly controlled exclusively by the incumbent.[15] Congress's intent in providing for arbitration was to give competitors more leverage in the negotiation process.[16] Because ILECs are "both competitors and suppliers" to new entrants like Intrado Comm, they "have strong economic incentive to preserve their traditional monopolies" and to "resist the introduction of competition" that was required by the 1996 amendments to the Act.[17] The language and design of Section 252 thus seeks to address the very unequal bargaining power manifest in negotiations between ILECs and competitors in order to advance Congress's goals of eliminating barriers to entry and to give competitors like Intrado Comm "a fair opportunity to compete" in the marketplace.[18]

Intrado Comm is poised to fulfill Congress's goals for increased competition by offering a competitive alternative to the 911 services currently provided by the ILECs in Virginia. In

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[14] *SBC/Ameritech Merger Order* ¶ 107.

[15] *See Atlantic Alliance Telecommunications, Inc. v. Bell Atlantic*, 2000 U.S. Dist. LEXIS 19649, 99-CV-4915 (ARR) (E.D. Va 2000) (noting that "[t]he tight schedule set out in the Act manifests an intention of Congress to resolve disputes expeditiously," that the strict timelines contained in the Telecommunications Act indicate Congress' desire to open up local exchange markets to competition without undue delay") (quoting *AT&T Communications Sys. v. Pacific Bell*, 203 F.3d 1183, 1186 (9th Cir. 2000)) and that "the legislative history explains that the purpose of the Act is 'to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition'" (quoting H.R. Conf. Rep. No. 104-458, at 113 (1996) reprinted in 1996 U.S.C.C.A.N. 10, 124)).

[16] *Local Competition Order* ¶ 15 (the "statute addresses this problem [of the ILEC's "superior bargaining power"] by creating an arbitration proceeding in which the new entrant may assert certain rights").

[17] *SBC/Ameritech Merger Order* ¶ 107; *see also Application by SBC Communications Inc., Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, Interlata Services in Oklahoma*, 12 FCC Rcd 8685, ¶ 57 (1997) (noting the ILECs' "incentive to delay fulfillment of requests for access and interconnection").

[18] *Local Competition Order* ¶ 18.

order to provide its competitive 911 service to the Virginia Counties, Intrado Comm must interconnect with the public switched telephone network ("PSTN") to which all 911 callers are connected and to which the 911/E911 wireline networks are connected. In short, Intrado Comm must interconnect with Verizon and Embarq to ensure the ILECs' customers dialing 911 can reach Intrado Comm's public safety customers. Interconnection with the ILECs is therefore the key component for any competitor to offer telecommunications services to Americans and is necessary for Intrado Comm to provide its competitive 911 service to the Virginia Counties.

Intrado Comm's interconnection arrangements with Verizon and Embarq also promote another core Congressional and Commission goal - enhanced, innovative offerings for public safety.[19] The Commission has recently expressed concern over the status of emergency communications and noted the "importance of communications in the event of an accident, natural disaster, or terrorist attack."[20] Chairman Genachowski has emphasized the need to maintain or quickly restore the communications needs of law enforcement agencies, fire departments, and hospitals after an emergency through a variety of means.[21] Commissioner McDowell likewise has recognized the need "to devise a solution for resolving the communications challenges faced by [the] nation's emergency response providers."[22] Public safety has determined that Intrado Comm is ready to meet these challenges, but Intrado Comm must have mutually beneficial interconnection arrangements in place that are designed to support

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[19] *Consumer Information and Disclosure; Truth-in-Billing and Billing Format; IP-Enabled Services*, FCC 09-68, Statement of Commissioner Copps (Aug. 27, 2009) (noting that one of the "critical challenges facing our country" is improvements in "public safety by enhancing the capabilities of our first responders").

[20] GN Docket No. 09-29, *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, ¶ 21 (May 22, 2009).

[21] Written Statement of Julius Genachowski, Chairman, Federal Communications Commission, before the Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet, U.S. House of Representatives, at 3 (Sept. 17, 2009).

[22] Written Statement of Commissioner Robert M. McDowell, Federal Communications Commission, before the Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet, U.S. House of Representatives, at 5 (Sept. 17, 2009).

the exchange of 911 traffic between carriers and that will ensure all 911 calls reach the appropriate first responder.

Expedited resolution of the consolidated arbitrations is therefore necessary. As the Commission has previously recognized, "even minor delays or restrictions in the interconnection process can represent a serious and damaging business impediment to competitive market entrants."[23] The delay in action on Intrado Comm's arbitration petitions is an impediment to competition in Virginia, especially for the Virginia Counties who have already determined to pursue competitive alternatives. Public safety customers in Virginia should not be further delayed from receiving the benefits of their choice. The only way to begin to deliver on the promise of innovative, competitive alternatives for the provision of E911 services is to act expeditiously.[24] Prompt resolution of these issues will also further the Commission's stated goals of promoting public safety communications and ensuring that ***all*** American consumers have access to the world's most advanced telecommunications services.[25] The Commission's efforts to quickly address Intrado Comm's petitions will therefore promote the goals of competition as well as the development and implementation of new and enhanced 911 services.

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[23] *Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures To Be Followed when Formal Complaints Are Filed against Common Carriers*, 13 FCC Rcd 17018 (1998).

[24] *See* WC Docket Nos. 08-33 and 08-185, Letter from Steve Marzolf, Integrated Services Program Director, Commonwealth of Virginia Wireless E-911 Services Board, to Marlene H. Dortch, Secretary, FCC (filed July 21, 2009) ("The time has come for us, collectively, to take the transformational steps necessary [to] ensure that the 9-1-1 system of the future is responsive to the needs of our citizens and emergency services. This proceeding provides an opportunity for the FCC to take a leadership role in advancing this vision for the future.").

[25] Written Statement of Commissioner Meredith A. Baker, Federal Communications Commission, before the Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet, U.S. House of Representatives, at 1 (Sept. 17, 2009); *see also Local Competition Order* ¶ 4 (noting that opening of the local exchange market to competition was "intended to pave the way for enhanced competition in all telecommunications markets, by allowing all providers to enter all markets").

CONCLUSION

Accordingly, for the foregoing reasons, Intrado Comm and the Virginia Counties respectfully request that the Bureau quickly resolve the pending arbitration proceedings to ensure the Virginia Counties can receive the competitive benefits envisioned by the Act.

Respectfully submitted,

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Dated: September 30, 2009

CERTIFICATE OF SERVICE

I, Angela F. Collins, certify that on this 30th day of September 2009, I served a copy of the foregoing Request for Expedited Treatment on the following via the method indicated:

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Attachment 4

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings	)	WC Docket No. 08-83 WC Docket No. 08-185

COMMENTS OF INTRADO INC. AND INTRADO COMMUNICATIONS OF VIRGINIA INC.

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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Presented by Consolidated Arbitration	)	
Proceedings	)	
	)	

COMMENTS OF INTRADO INC. AND INTRADO COMMUNICATIONS OF VIRGINIA INC.

Intrado Inc. and Intrado Communications of Virginia Inc. (collectively, "Intrado"), respectfully makes this submission in response to the request of the Federal Communications Commission ("Commission" or "FCC") for comments on "the specific issue of how competition in the provision of the 911 network to the [public safety answering points] PSAPs and other public safety agencies would impact the provision of public safety services in Virginia."[1] As the innovator of the Intelligent Emergency Network,® a comprehensive emergency communications architecture for the nation's next-generation emergency communications needs, Intrado wholeheartedly endorses the Commission's continued development and support of policies necessary to promote competitive 911 services. Given the consequential benefits to public safety and network reliability and furthering of the Commission's interest in broadband development and market competition, competitive 911/E911 services will secure manifest advantages for consumers and public safety agencies alike.

[1] WC Docket Nos. 08-33 and 08-185, *Comment Sought On Competitive Provision of 911 Service By Consolidated Arbitration Proceedings,* consolidated proceedings (rel. June 4, 2009).

Background

Intrado Communications was established in 1999 as a wholly owned subsidiary of Intrado Inc., which itself was formed in 1979. Intrado has provided data management and location-based routing infrastructure, technology, and services to phone companies, public safety organizations and government agencies for more that twenty-five years. Its experience with the 911/E911 infrastructure is extensive, encompassing the incorporation of new technologies into legacy public safety networks, as well as the development of state-of-the-art solutions for emerging communications systems. With a combination of thought leadership, investment in research and development, technological implementation, and system integration, Intrado has paved the way for refining automatic location identification (ALI) and call routing features nationwide, irrespective of the type technology or device used. Through local partnerships with public safety organizations, for example, Intrado was a pioneer in so-called "reversed 911" technologies, a tool used by officials for the rapid identification of disasters within a specified geographic area, community notification, and timely instruction for evacuation or other appropriate action. In the mobile context, Intrado made wireless Phase I and Phase II[2] a reality. Location based solutions delivered for Intrado's carrier customers have enabled the location of some 70,000 wireless 911 callers per day. For voice-over-IP ("VoIP") service providers, Intrado was the first in the nation in 1994 to make native VoIP 911 call routing possible and has led the industry since. Intrado has enhanced the provision of each aspect of 911/E911 service, maintaining a dynamic ALI database used to store subscriber information for emergency call routing to the nearest PSAP; pre-positioning the delivery of the master street address guide to be ready at the moment of a 911 call; and providing regionally distributed access points for aggregating VoIP 911 traffic into existing 911/E911 networks.

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[2] CC Docket No. 94-102, *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems* (Notice of Proposed Rulemaking adopted Sept. 19, 1994).

In recent years, Intrado has concentrated on the development and implementation of a seamless emergency network that essentially neutralizes the distinctions between communications devices, communications protocols, and calling locations for purposes of call routing and caller location display. The resulting Intelligent Emergency Network® architecture provides the means for seamlessly integrating Internet protocol ("IP") -based voice and data information into the nation's existing 911/E911 network, which allows new applications, like texting and video to be integrated into the 911 system, addresses network congestion and disabled PSAPs through the establishment of dynamic call routing and "virtual PSAPs," facilitates ubiquitous exchange of a wide array of emergency-related data between PSAPs and emergency responders, regardless of the originating communications platform, and promotes cooperation between PSAPs and public safety agencies.[3]

As a company at the forefront of advanced 911/E911 technology, Intrado has a strong interest in the full-scale enablement of competitive emergency communications services. No less important, though, has been Intrado experience as consultant and vendor to, and observer of, the 40-year old 911/E911 system, which stands in desperate need of the vitality and innovation offered by competition if it is to meet the communications challenges of the twenty-first century.

I. THE COMPETITIVE PROVISION OF THE 911 NETWORK AND SERVICES TO PSAPS FORWARDS THE COMMISSION'S STATUTORY MANDATES TO PROMOTE SAFETY OF LIFE AND PROPERTY, COMPETITION, AND TO ADVANCE NATIONWIDE BROADBAND DEVELOPMENT

Pursuant to Section 151 of the Communications Act of 1934, as amended ("Act"), the Commission has a Congressional mandate "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications

[3] *See, e.g.*, HP Corporation, *News Release: HP and Intrado Collaborate to Deliver Safer, Faster 9-1-1* (May 4, 2005), http://www.hp.com/hpinfo/newsroom/press/2005/050504a.html ("With the Intelligent Emergency Network, public safety officials at all levels of government can cost-effectively integrate new technologies and take advantage of enhanced public safety applications. For example, a 9-1-1 caller could transmit a photo of a suspect taken with a cell phone directly to a 9-1-1 call taker. That image, along with other pertinent information, could then be instantly available to a wider set of responders and responding agencies at all levels of government, thus increasing efficiency and control in a crisis situation.").

consumers and encourage the rapid deployment of new telecommunications technologies."[4] The Commission has repeatedly relied upon a related "principle of openness" to ameliorate the stifling qualities of existing oligopolistic communications network and thereby "promote competition, protect consumers, and spur technological innovation."[5]

In the context of emergency communications, the Commission has seen fit to apply this mandate in several matters. In *Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(E)(1)(A),*[6] the Commission granted limited forbearance from facilities-based federal universal service support to Virgin Mobile, a pure wireless reseller. This exemption only encompassed Virgin's Lifeline service and was predicated upon, *inter alia*, Virgin's agreement to "provide its Lifeline customers with 911 and enhanced 911 (E911) access regardless of activation status and availability of prepaid minutes . . . [and] E911-compliant handsets and replace, at no additional charge to the customer, non-compliant handsets of existing customers who obtain Lifeline-supported service."[7] The Commission concluded "that Virgin Mobile's Lifeline offering will compete with at least one other Lifeline offering, whether from the underlying CMRS provider, if this provider is an ETC, or from the incumbent wireline carrier. *We also believe that this competition will spur innovation amongst carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers.*"[8] Reflecting on the consequences of granting forbearance and eliminating the facilities-based requirement, the Commission determined the conditions were necessary because it:

> has an obligation to promote 'safety of life and property' and 'to encourage and facilitate the prompt deployment throughout the United States of a seamless,

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4 Preamble to the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

5 *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor To Sirius Satellite Radio Inc., Transferee*, 23 FCC Rcd 12348, ¶ 128 (2008); *see also, e.g., Sprint Nextel Corporation and Clearwire Corporation*, Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, 23 FCC Rcd 17570 (2008) (separate statement of Commissioner Copps).

6 24 FCC Rcd 3381 (2009).

7 *Id.* at ¶ 12

8 *Id.* at ¶ 19 (emphasis added).

> ubiquitous, and reliable end-to-end infrastructure' for public safety. The provision of 911 and E911 services is critical to our nation's ability to respond to a host of crises, and this Commission has a longstanding and continuing commitment to a nationwide communications system that promotes the safety and welfare of all Americans, including Lifeline customers.[9]

In the *E911 Scope NPRM*, the Commission questioned what, if anything, could be expected of telematics service providers in light of their burgeoning "hot button" technology.[10] One year later, the Commission "recognize[d] that telematics systems may offer location capabilities that are either equivalent, or superior, to our E911 rules that apply to licensed carriers connecting to the [public switched telephone network]."[11] One provider reported "dead reckoning, map matching, and GPS technology that is capable of providing a location to within 11 yards," while another described "GPS capabilities in cars with its units [that] exceed the Commission's E911 accuracy requirements for wireless location technologies all over the country."[12] In contrast to the heavily regulated, noncompetitive 911/E911 wireline network,[13] telematics service providers have successfully met, *sua sponte*, "the expectations of consumers, the need to strengthen Americans' ability to access public safety in times of crisis, and the . . . abilit[y] to compete in a competitive marketplace."[14] So successful were these providers that a subsequent order cited telematics to support the proposition that all "Internet-based telecommunications relay system ("TRS") provider[s] must transmit all 911 calls via the dedicated Wireline E911 Network . . . ."[15]

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9 *Id.* at ¶ 23.

10 *Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, Further Notice of Proposed Rulemaking, 17 FCC Rcd 25576, ¶¶ 61-64 (2002) ("E911 Scope NPRM").

11 *Global Mobile Personal Communications by Satellite (GMPCS)*, 18 FCC Rcd 25340, ¶ 72 (2003) ("*GMPCS Report and Order*").

12 *Id.*

13 While traditional wireline location accuracy is excellent and in fact sets the standard for call routing and locating callers, *i.e.*, using street addresses, in virtually every other category, the wireline 911 network has fallen desperately behind in terms of features and functionality that consumers have come to expect and rely on in the use of their communications systems and devices.

14 *GMPCS Report and Order* ¶ 3.

15 *See Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd 5255, ¶ 28, n.99 (2008) ("*TRS 911 Report and Order*")

The Commission should continue down this path and use its mandate to fully endorse and frame the competitive provision of 911/E911 networks and services. Competition in the provision of the 911 network to PSAPs and other public safety agencies will demonstrably increase the effectiveness, quality, and future worth of the nation's 911/E911 service. Benefits, akin to those witnessed in the case of competitive telematics services, will accrue across communications systems and state lines. Stakeholders – including consumers, public safety agencies (state and local, whose interests and rights should not be overlooked in the analysis extending beyond interconnection between carriers, which includes broader issues of a competitive 911 marketplace), and carriers – will be best served by a seamless 911/E911 network. The overall functionality and reliability of the nation's collective 911/E911 infrastructure will improve, greatly increasing the effectiveness of emergency responders in the event of widespread catastrophe or natural disaster, not to mention in the routine of answering and responding to approximately 240 million 911 calls per year. In the process, the Commission's charge to increase competition amongst all incumbent local exchange carriers ("ILEC") dominated telecommunications services, and its concomitant mandate to develop a nationwide broadband deployment strategy, will also be furthered.

A. Public Safety Benefits

Providing the interconnection rights and protocols necessary for the implementation of competitive 911/E911 service will result in public safety benefits to consumers and public safety agencies, thereby forwarding the Commission's statutory mandate to "promot[e] safety of life and property through the use of wire and radio communications."[16]

("We expect that providers will be able to use much of the same infrastructure and technology that is already in place for the delivery of 911 calls by interconnected VoIP service providers.").

[16] 47 U.S.C. § 151. *See infra*, Section II.

Consumers – the individuals who place an emergency phone call to summon police, fire, or medical assistance – have a vital interest in the seamless and reliable operation of the 911/E911 system. As the Commission has recognized in the mobile,[17] interconnected VoIP,[18] TRS,[19] and prepaid and resold wireless service and mobile satellite service contexts,[20] 911/E911 service levels should not fall below that of wireline 911/E911 service to ensure that this objective is achieved.[21] The 911/E911 network relies almost entirely on incumbent "local" networks (terminating at the PSAP). New technologies and devices are forced to 'dumb down', or put more gently, be made backward compatible with, the current 911/E911 infrastructure. This delays the integration of more advanced technologies and, in the meantime, causes a dangerous gap between what consumers believe is operational and what is really available to them. The National Emergency Number Administration has observed that "citizens ... reasonably expect to be able to contact 9-1-1 with technologies they use to communicate every day."[22] If a telecommunications device has a numeric keypad, consumers believe that they can contact emergency authorities and receive prompt assistance. Thus, the act of "dialing 9-1-1" should

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17 *Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, 11 FCC Rcd 18676, ¶ 158 (1996) ("*E911 First Report and Order*") ("The goal in this proceeding has been to make wireless services as comparable as possible to wireline service in E911 access"); Ensuring Needed Help Arrives Near Callers Employing 911 Act of 2004, Pub. L. No. 108-494, 118 Stat. 3986 (2004). (establishing an E-911 Implementation Coordination Office).

18 *See, e.g., E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶¶ 36, 48 (2005) ("*VoIP E911 Order*").

19 *See, e.g., Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, 23 FCC Rcd 11591, ¶ 1 (2008) ("*Second TRS 911 Report and Order*") (ensuring a "functional equivalency mandate" for TRS users); *TRS 911 Report and Order* ¶ 21 (adopting measures to "ensure that persons using Internet-based TRS can promptly access functionally equivalent 911 service.").

20 *GMPCS Report and Order* ¶¶ 1-2.

21 *TRS 911 Report and Order* ¶ 23 (recognizing the goal to have the most efficient and most reliable 911/E911 network possible regardless of the platform or technology used by the end user's service provider or the means by which the individual places the call).

22 NENA, Next Generation Partner Program, *A Policy Maker Blueprint for Transitioning to the Next Generation 9-1-1 System: Issues and Recommendations for State and Federal Policy Makers to Enable NG9-1-1*, 2 (Sept. 2008), http://www.nena.org/sites/default/files/NG9-1-1PolicyMakerBlueprintTransitionGuide-Final_0.pdf.

bring no additional connectivity challenges and foster no additional delays simply because the communications device used to place the call is not a landline telephone.[23] Restrictions on the emergency calling capabilities of particular telecommunications services can severely compromise the public safety. Even if they are disclosed at the time of service purchase or are amenable to consumer amelioration,[24] limitations on automatic number or location functionality or delays in PSAP routing can prove life-threatening in an emergency.

As several 911/E911 observers industry watchers have noted, the existing emergency network isn't up to meeting consumer expectations. Jeff Robertson, Executive Director of the 9-1-1 Industry Alliance, observed that "[a]s more advanced wireless devices are put into use, the nation's 40-year-old 911 emergency system is becoming increasingly antiquated and unable to function properly for users of the new devices."[25] Dale Hatfield, Brad Bernthal, and Phil Weiser, who performed a comprehensive evaluation on the subject for the 9-1-1 Industry Alliance, concluded that America's "emergency communications networks" are hindered in their evolution because they "are unable to accommodate what is increasingly viewed as basic functionality inherent in many of today's advanced technologies."[26] As early as 1994, during the initial phase of E911 adoption, the Commission itself took care "that the effective operation of 911 services is not compromised by new developments in telecommunications."[27]

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[23] *See, e.g., VoIP E911 Order* ¶ 23, n. 72 ("The record clearly indicates, however, that consumers expect that VoIP services that are interconnected with the PSTN will function in some ways like a 'regular telephone' service"); *TRS 911 Report and Order* ¶ 23, n.86 ("As we have stated previously, the goal of our E911 rules is to provide meaningful location information to first responders, regardless of the technology or platform employed").

[24] *See, e.g.*, 47 C.F.R. § 9.5(d)-(e) (affording interconnected VoIP service customers a means to update their "registered location" for 911/E911 location purposes in lieu of an automatic location method).

[25] W. David Gardner, *911 Services Can't Handle Advanced Wireless Devices, Services*, InformationWeek (May 7, 2008), http://www.informationweek.com/news/mobility/security/showArticle.jhtml?articleID=207600556.

[26] Dale Hatfield, Brad Bernthal, and Phil Weiser, 9-1-1 Industry Alliance, *Health of the US 9-1-1 System*, 6, http://www.911alliance.org/9IA_Health_of_US_911%20_2_.pdf.

[27] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, Notice of Proposed Rulemaking, 9 FCC Rcd 6170, ¶ 1 (1994) ("*E911 NPRM*").

The demands for increased 911/E911 reliability and functionality for consumers should ideally be met by PSAPs and public safety agencies. State and local governments, acting in concert with these organizations, are responsible for integrating existing emergency calling systems with emerging telecommunications services and enhanced 911/E911 technologies.[28] Yet new telecommunications and 911/E911 developments can result in daunting technical and operational challenges that require a national framework. The "emergence of IP as a means of transmitting voice and data and providing other services via wireless, cable, and wireline infrastructure," for example, "has significant implications for meeting the nation's critical infrastructure and 911 communications needs."[29]

The competitive provision of 911/E911 network and services, especially those based on IP technology, promise to bridge the gap between wireline, wireless and Internet-based telecommunications, and offer specialized solutions to specific technical needs. Instead of forcing states to build around an antiquated ILEC wireline network, these competitive services, while able to interoperate with the ILEC network, can offer specific improvements to deficiencies in a public safety agency's emergency response protocols, affording PSAPs enhanced call routing, database management, and automatic location services to improve the speed and accuracy of the agency's emergency response teams. Temporary fixes for current technological limitations, such as the "last known cell" for roaming mobile telephone customers,[30] should not be viewed as an acceptable solution and can be permanently addressed with "real time" location and number identification capabilities. Instant collaboration between emergency responders, public safety agencies, and callers is possible with the seamless exchange of voice, text, or IP-originated information. By providing 911 call completion services to enterprise customers, competitive 911/E911 service providers put public safety organizations in

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28 *See VoIP E911 Order* ¶ 7; H. R. Rep. No. 106-25, 7-8 (1999).

29 *VoIP E911 Order* ¶ 10.

30 *See, e.g., Implementation of the NET 911 Improvement Act of 2008,* 23 FCC Rcd 15884 (2008) (statement of Chairman Kevin J. Martin).

direct touch with consumers despite the presence of an intermediary telecommunications service.[31] In short, competitive 911 services provide a cost-effective, technologically progressive method of addressing the "new communications technologies [that] have posed technical and operational challenges to the 911 system" and meets the Commission's goal of "adopt[ing] a uniform national approach to ensure that the quality and reliability of 911 service is not damaged by the introduction of such communications technologies."[32]

Collaborations between competitive service providers and public safety agencies have already achieved demonstrable technological gains for consumers. For example, on June 9, 2009, for the first time in the nation's history, Intrado initiated the first test of its text-to-911 solution, sending to Black Hawk County's new PSAP a text message through the native 911 network (and not utilizing an intermediary service). Formal activation of this service, which is planned for July 2009, is the direct result of cooperation between Intrado, i Wireless (a partnership between T-Mobile USA and Iowa Network Services), and RACOM Corporation.[33] One month earlier, the GM Corporation's OnStar service announced a nationwide partnership with Poison Control, affording their subscribers "the added peace of mind that Poison Control is just a button press away should they encounter any type of poisoning situation in their vehicle."[34]

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[31] As Colin Whitmore, emergency management consultant and EMS Commander for the Virginia Tech Rescue Squad on April 16, 2007, noted, "There's little reason, two years after the Virginia Tech tragedy, for any college or university to be excluded from a community's preparedness efforts. We must all equally share the responsibility of protecting and preparing the higher-education community through inclusion and open lines of communication. After all, that's what coordinated preparedness is all about." Colin Whitmore, *Are Students Lulled Into a False Sense of Security with Messaging Systems?*, Government Technology, 3 (Mar. 20, 2009), http://www.govtech.com/gt/625778?id=625778&full=1&story_pg=1.

[32] *VoIP E911 Order* ¶ 8.

[33] *See* Fox Business, *Iowa 9-1-1 Call Center First in Nation to Successfully Trial 9-1-1 Text Messaging*,http://www.foxbusiness.com/story/markets/industries/health-care/iowa----center-nation-successfully-trial----text-messaging/ (June 9, 2009)*;* Luke Meredith, *Northeast Iowa county set to receive 911 texts*, Chi. Trib. (June 10, 2009), http://archives.chicagotribune.com/2009/jun/10/health/chi-ap-ia-emergencytexting.

[34] GM Corporation, *OnStar to Partner with Poison Control*, GM Corporate Information - Safety Initiatives News (Mar. 19, 2009),

Recent tragedies like the April 16, 2007 Virginia Tech and February 14, 2008 Northern Illinois University shootings have emphasized the need for seamless communications to and among emergency responders according to consumer expectations.[35] Drastic state budget cuts for emergency preparedness have minimized the possibility that any improvement can be produced within the confines of the existing 911/E911 system - as a recent *Urgent Communications* article observed, "the states of Oregon, Hawaii and Delaware have taken millions of dollars collected as 911 fees and transferred it to their general funds, and several other states have considered taking similar action," eviscerating federal support for 911 grant programs and leaving Phase II upgrades for PSAPs uncompleted.[36] Competitive 911/E911 service offers the only means of advancing the Commission's statutory duty to promote the safety of life and property in a timely, sound, and comprehensive fashion.

B. Network Reliability Benefits

The terrorist attacks of September 11, 2001 and the destruction wrought by Hurricane Katrina in 2005 reminded the country of its dependence on a survivable emergency calling network to coordinate the efforts of numerous emergency responders. Yet even in the narrower context of a heart attack, house fire, or convenience store robbery, an inefficient or antiquated 911/E911 system can have devastating consequences. The redundant and robust construction and advanced network architecture of competitive 911/E911 services will do much to strengthen the quality and consistency of the country's emergency response efforts, enhancing public safety on a local, regional, and nationwide level according to the Commission's concomitant mandate.

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http://www.gm.com/corporate/responsibility/safety/news/2009/poison_031609.jsp.

[35] *See* Gardner, *supra*, n. 26 ("Robertson noted that it's difficult and often impossible to send text from cell phones and make it understandable at 911 centers. The problem surfaced in painful reality in the recent tragic Virginia Tech shootings. 'Many students expected that they could text message the 911 dispatch center with vital information, only to find out that the 911 network does not support text messaging, photos, or multimedia messages'").

[36] Donny Jackson, *Funds for 911 must be protected*, Urgent Communications (May 28, 2009), http://urgentcomm.com/policy_and_law/commentary/911-funds-protection-20090528/?dsq=10428769#comment-10428769.

The existing 911/E911 system is limited in size by the geographical operating area occupied by the responsible ILEC, and in scope by the technology, funding, and capacity that the specific ILEC sees fit to allocate. In contrast, a fully competitive 911/E911 market can operate without these artificial limitations and can augment existing 911/E911 systems. Competition in the provision of the 911 network to PSAPs and other public safety agencies will increase the number of connections among and between PSAPs, including those which, today, operate in separate ILEC regions. This adds to the redundancy of the nation's 911/E911 network as a whole, a vital quality for addressing systemic challenges and an important component of the Commission's charge. Outages – due to endemic network-wide failures or as byproduct of attempting to repair unrelated system problems – can isolate individual PSAPs.[37] This in turn can lead to a flood of traffic in other working PSAPs, increasing the chances of a tardy or erroneous deployment of emergency responders far distant from the actual emergency. Each diverse PSAP connection adds another layer of defense against this outcome, addressing the Commission's long-standing interest in diagnosing and preventing 911/E911 outages in wireline[38] and emerging[39] telecommunications systems. It also diminishes the possibility of

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[37] *See, e.g.*, Ernesto Londoño, *Backup System Failed During Weekend 911 Disruption*, Wash. Post (Dec. 18, 2007), http://www.washingtonpost.com/wpdyn/content/article/2007/12/17/AR2007121701765.html (describing a three-hour PSAP failure due to phone service outage and backup system malfunction, which resulted in fire damage to a consumer's home).

[38] *See, e.g.*, Network Reliability and Interoperability Council, *U.S. Telecommunications Industry Nears Year 2000 Readiness*, 1999 WL 547450 (July 23, 1999) (assessing telecommunications network outages and PSAP readiness in light of Y2K concerns); *Amendment of Part 63 of the Commission's Rules to Provide for Notification by Common Carriers of Service Disruptions*, 10 FCC Rcd 11764, ¶ 21 (1995) (911 outage reporting requirements instituted because "these increasingly complex and concentrated [E911 PSAP] systems justified federal interest in discovering any common threats to their reliability.").

[39] *See, e.g., Federal Communications Commission Releases Agenda for Summit on Deployment and Operational Guidelines for Next Generation IP-Enabled 911 and E911 Services*, 2009 WL 368557 (Feb. 12, 2009) (evaluating development of standard for "call-handling in the event of call overflow or network outages"); *New Part 4 Of The Commission's Rules Concerning Disruptions To Communications*, 19 FCC Rcd 3373, ¶ 25 (2004) (applying service and call identification outage reporting requirements in "anticipat[ion] that the public safety community and 911-type services will also evolve to utilize new technologies, services, and platforms . . . to all communications providers for which we are proposing general outage-reporting requirements.").

911/E911 vulnerability to telecommunications sabotage, a growing threat to otherwise highly survivable fiber optic networks.[40]

IP redundancy and diversity also permits emergency calls to be alternatively routed in the event of communication failure as well as quickly transferred between PSAPs that, due to restrictions inherent in legacy switches, may otherwise be limited in their ability to transfer 911 calls to the appropriate PSAP. Given the Commission's emphasis on foregoing intermediaries to provide a direct link between a consumer and the relevant PSAP,[41] competitive 911/E911 services wholly compatible with the legacy wireline 911/E911 system architecture are vital, if calls are to be rapidly and seamlessly rerouted or transferred in times of network distress. Properly interconnected competitive 911/E911 services could provide the interoperability and PSAP rerouting unavailable in the Hurricane Katrina crisis, ensuring that emergency calls are properly received and answered even in the midst of a compromised telecommunications network. For example, during Hurricane Katrina:

> thirty-eight 911 call centers ceased to function. Limited training and advanced planning on how to handle rerouting of emergency calls under this situation created serious problems. As an example, the City of Biloxi was able to relocate their 911 call center prior to landfall; however, representatives relocated to the facility did not have full 911 capabilities. This severely hampered their ability to effectively route 911 calls to the appropriate agencies. The Katrina experience identified that there appeared to be a lack of 911 PSAP failovers and some deficits in training on routing and handling of calls when a crisis and rerouting occurs. . . . According to FCC data, more than 3 million customer phone lines were knocked out in the Louisiana, Mississippi and Alabama area following Hurricane Katrina. The wireline telephone network sustained significant damage both to the switching centers that route calls and to the lines used to connect buildings and customers to the network. Katrina highlighted the dependence on tandems and tandem access to SS7 switches. The high volume routes from tandem switches, especially in and around New Orleans were especially critical and vulnerable. Katrina highlighted the need for diversity of call routing and avoiding strict

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[40] *See* Mark Gomez, Ken McLaughlin & Julia Prodis Sulek, *San Jose police: Sabotage caused phone outage in Santa Clara, Santa Cruz counties*, San Jose Mercury (Apr. 9, 2009), http://www.mercurynews.com/ci_12106300.

[41] *See, e.g., TRS 911 Report and Order* ¶ 14 (establishing location identification requirements in the case of TRS emergency calls constitutes " a unique challenge" due to the necessary presence of a communications assistant).

> reliance upon a single routing solution. One tandem switch, which was critical for 911 call routing, was lost from September 4 to September 21.[42]

If competitive 911/E911 services like the Intrado Intelligent Emergency Network® architecture are directly interconnected with the legacy wireline 911/E911 network, an alternative pathway for emergency calls is available. Nonfunctional or technically deficient PSAPs (such as those only partially compliant with the Commission's Phase II E911 standards) might be bypassed; overburdened PSAPs might temporarily enlist the assistance of other call centers to coordinate a joint response to an influx of aid requests. IP-based competitive 911/E911 services can, by virtue of their construction, leverage their near-immunity to wireline switch overloads and outages that can critically suspend the functionality of the traditional 911/E911 network. IP technology also permits the rapid deployment of "virtual PSAPs," in which calling centers are established (and calls routed on a real-time basis) at any broadband-equipped location where qualified public safety authorities have congregated. This technology encourages emergency communication coordination and forwarding on a platform-independent basis, thereby increasing consumers' chances of reaching a PSAP even if mobile and wireline voice communications are impossible.[43] Instead of a one-to-one serial connection – a landline telephone call over a single wireline system to an isolated PSAP – competitive 911/E911 services offer the possibility of parallel connections, where a variety of telecommunications devices transmit calls over a redundant network to the appropriate PSAPs or temporary call centers, which may pool resources and distribute call load as circumstances warrant.

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[42] *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Notice of Proposed Rulemaking, 21 FCC Rcd 7320 ("*Katrina NPRM*") (citing attached Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, Report and Recommendations to the Federal Communications Commission*, 71 Fed. Reg. 38578-79) (Jul. 7, 2006)).

[43] *Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, 22 FCC Rcd 10541, ¶¶ 11, 13 (2007) ("*Katrina Order*") (describing "the Katrina Panel's recommendation that we act to enhance the public safety community's awareness of non-traditional emergency alternative technologies that might be of value as back-up communications systems in a crisis" and "agree[ing] that improving the public safety community's knowledge of, and training in, alternative technologies would improve preparedness for future crises . . . including two-way paging, satellite, IP-based systems, WiFi and WiMAX.").

Competitive 911/E911 services will advance the Commission's goals of enhancing public safety in times when the nation's emergency response capabilities are subjected to extreme stress. The redundant quality of these services, coupled with the amenability of their IP-based architecture to interface with a wide variety of communication devices, meets the two "reliability and resiliency" best practices identified by the Hurricane Katrina Panel (with the aim of ensuring "a more robust 911 and E911 service") and subsequently flagged by the Commission for proactive implementation.[44] Competitive 911/E911 services, by their very nature, answer the call for "placing and maintaining 911 circuits over diverse interoffice transport facilities (*e.g.*, geographically diverse facility routes, automatically invoked standby routing, diverse digital cross-connect system services, self-healing fiber ring topologies, or any combination thereof)."[45] Diverse connection and routing pathways to PSAPs afford "[n]etwork operators, service providers, equipment suppliers and public safety authorities . . . alternative methods of communication for critical personnel."[46]

In the *Katrina Order*, the Commission expressed its intent to ensure that, "immediately following any large disaster, there is an efficient means by which federal, state and local officials can identify and locate private sector communications assets that can be made rapidly available to first responders and relief organizations."[47] If the Commission endorses and enables meaningful competitive 911/E911 services, these officials can be certain that key private communications assets meeting this goal will be available tomorrow, and may adjust their disaster planning measures accordingly.

C. Benefits to Competition and Broadband Development

Competitive 911/E911 systems rooted in IP-based technology, such as those offered by Intrado, can utilize the inherent flexibility of the underlying transmission method to offer a

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44 *Id.* at ¶ 74; *Katrina NPRM* ¶ 16.

45 *Katrina Order* ¶ 74.

46 *Id.*

47 *Id.* at ¶ 61.

variety of customizable emergency calling solutions for PSAPs, wireline and wireless carriers, other service providers, and enterprise customers. The sophistication and breadth of these solutions sharply contrast with the typical "one-size-fits-all" emergency services offered by antiquated ILEC systems, affording a true competitive choice for the first time in the forty-year history of 911 services. 911/E911 service will no longer be fractured according to artificial local access and transport boundaries, but can exist on a national level, offering tailored service to particular locales according to real-world geographic concerns. The widespread deployment of technologically sophisticated competitive 911/E911 services, seamlessly integrated, can accomplish these goals, and in the process of doing so, advance the Commission's strong interest in creating a national broadband deployment strategy.

The deployment of competitive 911/E911 systems will introduce consumer choice into one of the few remaining ILEC-dominated telecommunications services. In *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, the Commission explained that its "policy of complete detariffing," in keeping with "pro-competitive, deregulatory objectives of the 1996 Act," would ensure that "carriers in the interstate, domestic, interexchange marketplace will be subject to the same incentives and rewards that firms in other markets confront."[48] So strong was this objective, and so manifest the benefits, that the Commission sought "ultimately to accomplish the same result in every telecommunications market, because we believe that effectively competitive markets produce maximum benefits for consumers, carriers, and the nation's economy."[49] Endorsing and enabling competitive 911/E911 service will introduce these benefits to one of the last remaining closed, ILEC-controlled telecommunications markets. The Commission will be one step closer to completing a process that dates back to 1979 - that of

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[48] 11 FCC Rcd 20730, ¶ 4 (1996).

[49] *Id.*

"deregulat[ion] so far as possible consistent with the public interest in the emerging competitive telecommunications market."[50]

Additional salutary effects will flow from this decision. "As competition develops," the Commission will be able to dispense "from adopting prescriptive regulations to relying on market forces to promote the public interest."[51] As witnessed in the case of telematics, competition will likely spur the development of emergency communications technology so sophisticated and accurate as to outdistance the Commission's rulemaking process. Technological innovation in the competitive 911/E911 market may also provide the building blocks for growth in other industries, an important economic goal for the incoming National Telecommunications and Information Administration ("NTIA") leadership.[52] The Commission will also be acting in accord with its highly effective *laissez-faire* approach to Internet regulation with respect to those competitive 911/E911 services based on IP technology.[53]

IP's integral role in evolving 911/E911 services means that the FCC's decision to open the emergency communications market will advance the goals of broadband deployment, and the creation of a national broadband strategy, shared by Congress, the White House, and the Commission.[54] In 2008, Congress passed the New and Emerging Technologies 911

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[50] *Policy and Rules concerning rates for competitive common carrier services and facilities authorizations therefor*, Notice of Inquiry and Proposed Rulemaking, *77* F.C.C.2d 308, ¶ 2 (1979).

[51] *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 22745, ¶ 17, n. 38 (2001).

[52] *See, e.g.*, Telecommunications Reports, *Strickling, Chopra Pledge To Boost Broadband At Confirmation Hearing*, TR Daily (May 19, 2009), http://www.tr.com/online/trd/2009/td051909/index.htm (summarizing NTIA nominee Lawrence Strickling's intent to increase the competitiveness of all American businesses by providing capital to "incumbents and entrepreneurs" for "growth and innovation" in communications).

[53] *See, e.g.*, 47 U.S.C. § 230(b)(2) ("It is the policy of the United States . . . to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation").

[54] *See, e.g.*, Telecommunications Reports, *supra*, n. 53 (announcing White House Office of Science and Technology Policy nominee Aneesh Chopra's intent to "make 'broadband more abundant.'"); American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 419-420, 123 Stat. 115, 512-513 (2009) (instructing the Assistant Secretary of Commerce for Communications and Information and FCC to develop a national broadband access improvement and demand stimulation plan).

Improvement Act of 2008 ("NET911 Act"),[55] intending to bring about "the next step in th[e] evolution" of the 911/E911 system by "transition[ing] . . . the 911 infrastructure to an IP-enabled system . . . [that] allows for greater flexibility in the types and amount of information that may be transmitted and shared by emergency service providers."[56] The Commission's subsequent public inquiry, *A National Broadband Plan for Our Future*, reflected on "[w]hat broadband policies would best promote the deployment of next generation 911 (NG 911) networks, including emergency services IP networks."[57] Opening 911/E911 service to competition meets these objectives, permitting the immediate deployment of a highly advanced, IP-enabled emergency communications network that can meet the needs of all extant telecommunications service providers.

As the Commission noted in its *VoIP E911 Order*, interconnected IP voice providers are free to take advantage of "off-the-shelf" solutions to achieve the Commission's E911 service implementation standards. IP-based competitive 911/E911 services will provide more choices for prospective broadband service providers, lowering compliance costs for and increasing consumer confidence in burgeoning VoIP services. Rather than simply providing a selection of existing 911/E911 services designed for other calling platforms and requiring integration, the Commission has the opportunity to permit broadband providers access to highly tailored, eminently compatible emergency calling service, thereby increasing the speed and frequency of deployment.[58] As existing wireline and mobile providers demand similar quality of emergency service, an IP-based 911/E911 system will further increase the nation's routine use of broadband technology. No less important is PSAP adoption of IP-enabled competitive 911/E911 services,

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55 Pub. L. No. 110-283, 122 Stat. 2620 (2008).

56 H.R. Rep. 110-442, 8 (2008), *reprinted in* 2008 U.S.S.C.A.N. 1011, 1013.

57 *A National Broadband Plan For Our Future*, GN Docket No. 09-51, Notice of Inquiry, FCC 09-31, ¶ 75 (rel. Apr. 8, 2009).

58 *VoIP E911 Order* ¶ 31 (noting that "the uniform availability of E911 services may spur consumer demand for interconnected VoIP services, in turn driving demand for broadband connections, and consequently encouraging more broadband investment and deployment . . . .").

which will necessarily "improve access to, and use of, broadband service by public safety agencies" and thereby meet another Congressional imperative in the process.[59]

As the nation completes its transition toward a truly competitive telecommunications market, driven in large part by the utility and flexibility of IP technology, its 911/E911 system must also evolve. The Commission should cast off the last vestiges of the ILEC-dominated, LATA-defined emergency communications system and, in accordance with its broadband mandate, fully unleash the potential of IP-based competitive 911/E911 services.

II. THE FCC's EXTENSIVE STATUTORY AUTHORITY AND WELL-ESTABLISHED PRECEDENT SUPPORT THE FURTHER DEVELOPMENT OF THE FEDERAL FRAMEWORK TO ENSURE ADEQUATE FACILITIES FOR THE PURPOSE OF PROMOTING SAFETY OF LIFE AND PROPERTY

The Commission's jurisdiction over 911/E911 service springs from its mandate in Section 151 of the Act to utilize the nation's wire and radio infrastructure to promote the safety of life and property. The unique public safety concerns of 911 service, and its "virtually ubiquitous and . . . long-standing nationwide status as the wireline national code for quick and easy access to emergency services," have fostered additional statutory interpretations to ensure its extension to evolving telecommunications technologies.[60] This vast panoply of authority likewise embraces the development of competitive 911/E911 services, which will themselves offer a new and comprehensive approach towards evolving telecommunications technologies.[61]

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[59] Pub. L. 111-5, 420, 123 Stat. 115, 513 (2009); *see also A National Broadband Plan for Our Future* ¶ 75 (questioning how a "[next generation] 911 migration plan [might] assist with ensuring access to broadband service by public safety answering points (PSAPs) and establishing appropriate benchmarks").

[60] *Implementation of 911 Act; The Use of N11 Codes and Other Abbreviated Dialing Arrangements*, 15 FCC Rcd 17079, ¶ 9 (2000).

[61] Just as the Commission has used these sources of authority to implement various intermediary technical standards on telecommunications carriers to meet its goals (e.g., the Phase II E911 requirements on wireline and mobile carriers), so too will the Commission be able to effectuate all technical arrangements in support of meaningful 911/E911 competition, such as the promulgation of necessary interconnection and peering arrangements between ILECs and competitive 911/E911 service providers.

AT&T first allocated wireline emergency access via the digits "9-1-1" in 1968, the telephonic code that would ultimately function as "a single, nationally used three-digit number that is easy to remember and dial in emergency situations."[62] Routing emergency telephone calls to PSAPs "over dedicated telephone lines," the 911 system was designed to ensure that emergency calls "are recognized and answered as emergency calls by professionals trained to assist callers in need of emergency assistance."[63] As early as 1968, FCC Defense Commissioner Lee Loevinger recognized the challenges of implementing a "simple universal telephone number to summon aid."[64] Loevinger cited "[f]ormidable difficulties" in implementation "arising in part out of the size and complexity of the United States," such as "the fact that political boundaries within which emergency agencies are organized do not correspond to boundaries of the telephone exchanges."[65] He also reflected on the mutability of the system according to technological advancement, given "that there may very well be better systems developed in the future, and new techniques and new equipment may permit means of employing the telephone which are not now practical . . . ."[66] These same geographic concerns and technological advancement considerations are directly relevant to the competitive provision of 911/E911 services to PSAPs today. Only through a nationwide emergency communications service market can these forty year-old stumbling blocks finally be overcome.

The development of E911 technology in the early 1990s led the Commission to declare its intent "to ensure broad availability of 911 and enhanced 911 services to users of the PSTN whose health and safety may depend on 911 emergency services systems"[67] by way of Section

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62 *E911 NPRM* ¶¶ 3-4.

63 *Id.* at ¶ 4.

64 Lee Loevinger, *The Universal Emergency Service Number - The Problems and Some Answers -*, Lee Loevinger Correspondence (Feb. 27, 1968), http://www.911dispatch.com/911/history/loevinger_letter1.html.

65 *Id.*

66 *Id.*

67 *E911 NPRM*, ¶ 1.

151.[68] The Commission relied upon this mandate to insist upon equivalency between wireline E911 offerings and those of other telecommunications services[69] including, most recently, those of emerging Internet-based technologies, pursuant to the finding that "regardless of the regulatory classification, the Commission has ancillary jurisdiction to promote public safety by adopting E911 rules for interconnected VoIP services."[70] The Commission has determined that both the technological basis and broad mandate of Section 151[71] support the "adopt[ion] [of] an immediate E911 solution that applies to all interconnected VoIP services" that "most appropriately discharges the Commission's statutory obligation to promote an effective nationwide 911/E911 emergency access system,"[72] a finding that has been upheld against charges of high implementation cost or impracticability.[73] The Commission has clearly held that the need for a resilient, reliable, and uniform emergency calling system, per the demands of public safety, places equal demands on all carriers, despite differences in incumbency status or telecommunications service technology.[74]

A key piece of Congressional legislation recognized the Commission's preeminent role in promoting a unified, technologically progressive emergency calling system. The Wireless Communications and Public Safety Act of 1999 ("911 Act")[75] explicitly designated 9-1-1 as the "universal emergency telephone number"[76] through the Commission's plenary numbering authority.[77] Drawing upon the Commission's long-standing "commitment to the rapid

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68 47 U.S.C. § 151.

69 *See E911 First Report and Order* ¶¶ 8, 158; *GMPCS Report and Order* ¶¶ 12-13.

70 *VoIP E911 Order* ¶ 26.

71 *See Id.* at ¶¶ 28-29.

72 *Id.* at ¶ 36.

73 *See Nuvio Corp. v. F.C.C.*, 473 F.3d 302, 307-08 (C.A.D.C. 2006) (citing Commission's judgment of "the threat to public safety" as a countervailing response to economic concerns).

74 *See Katrina Order* ¶ 96.

75 Pub. L. No. 106-81, 113 Stat. 1286 (1999).

76 *See* 47 U.S.C. § 251(e)(3).

77 47 U.S.C. § 251(e)(1) (affording the Commission "exclusive jurisdiction over those portions of

implementation of the technologies needed to bring emergency assistance to wireless callers throughout the United States"[78] – evidenced by an emphasis on promulgating "rules ... intended to be technology-neutral" and to "encourage the most efficient and effective technologies to report the location of wireless handsets, the most important E911 feature both for those seeking help in emergencies and for the public safety organizations that respond to emergency calls"[79] – the 911 Act directed the establishment of a "seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs."[80] The House Report[81] elaborated on these Congressional goals, stressing the need for federal leadership in encouraging technological innovation amongst the states:

> One section of the legislation directs the FCC to play a much more assertive role in encouraging and assisting the States to deploy these advanced safety systems. . . . There is a wide variation in State and local emergency communications systems in the United States. . . . The purpose of the legislation is to encourage investment in emergency communications systems and other public safety initiatives, so that emergency organizations of States and localities are equipped with 21st Century technology to address the public safety challenges they currently face. . . . [T]he legislation is intended to encourage the Commission and the States to develop and implement coordinated State plans to upgrade 911 systems - and to do so with all the affected parties involved in the process. The physics and market structure of commercial wireless telecommunications, and the nature of emergency medical services mean, as a practical matter, that the end-to-end emergency communications systems contemplated by the legislation cannot be entirely developed in many or most cases on a city by city, or county by county basis, although local government will play a central planning and implementation role.

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the North American Numbering Plan that pertain to the United States"); *see also Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 19392, ¶ 268 (1996) (intervening history omitted), *aff'd in part, rev'd in part, Verizon Communications, Inc. v. F.C.C.*, 535 U.S. 467 (2002) ("By retaining authority to set broad policy on numbering administration matters, we preserve our ability to act flexibly and expeditiously on broad policy issues and to resolve any dispute related to numbering administration pursuant to the 1996 Act."); *Administration of the North American Numbering Plan*, 78 Rad. Reg. 2d (P & F) 821, ¶ 1 (1995).

78 *E911 First Report and Order* ¶ 6.

79 *Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, 12 FCC Rcd 22665, ¶ 5 (1997).

80 Pub. L. No. 106-81, 2, 113 Stat. 1286, 1287.

81 H. R. Rep. No. 106-25, 8.

The related *Implementation of 911 Act* relied heavily on the Commission's plenary numbering authority to ensure 911 functionality and reliability in accordance with the 911 Act, such as "implement[ing] a permissive dialing period, during which emergency calls will be routed to the appropriate emergency response point using either 911 or the seven- or ten-digit number to allow time for the education of consumers as to the transition to the use of 911."[82] To maintain "consisten[cy] with the purpose of the 911 Act," the Order required 911 calls to "be routed to an 'appropriate authority.'. . . if there is no statewide default answering point as of the release date of this Order, carriers shall begin delivering 911 calls to an appropriate local emergency authority, for example, the existing local law enforcement authority."[83]

The Commission subsequently utilized the 911 Act as the basis for requiring several disparate technologies, including mobile satellite systems and resold and prepaid wireless services, to provide enhanced 911 services.[84] It also extended its plenary numbering authority to interconnected Internet-based TRS systems[85] and interconnected VoIP services, affirming "[t]he Commission's authority to require network changes to provide the E911 features that have long been central to the nation's 911 infrastructure."[86]

Each of these sources of authority – the fundamental mandate to promote public safety through wired and wireless technologies, the expansive plenary numbering authority, and the repeated statutory instructions to promote and oversee a unified, technologically-progressive enhanced 911 network – afford the Commission substantial latitude in shaping the next-generation 911/E911 system. Exercised in concert with the Commission's statutory

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82 *Implementation of the 911 Act The Use of N11 Codes and Other Abbreviated Dialing Arrangements,* 16 FCC Rcd 22264, ¶ 16 (2001).

83 *Id.* at ¶ 25.

84 *GMPCS Report and Order* ¶¶ 2, 13.

85 *Second TRS 911 Report and Order* ¶¶ 21-22 ("The record reflects a general consensus that Internet-based forms of TRS should have a uniform numbering system to facilitate interoperability between deaf and hearing users and to support comprehensive E911 service.").

86 *VoIP E911 Order* ¶ 33, 35.

responsibility to promote "enhanced competition in all telecommunications markets, by allowing all providers to enter all markets,"[87] the Commission has the ability to eliminate today's inconsistent, state-by-state classification of 911 services by designating a fully competitive nationwide emergency communications market. Instead of a deductive approach to technological challenges - designating specific standards for integrating emerging telecommunications services with wireline 911/E911 networks - the Commission has the ability to take an inductive approach, removing barriers to an open, nationwide market, and enabling competitive forces to meet specific service demands.

Two additional sources of authority, predicated on the competitive and broadband deployment goals discussed in the preceding section, are directly applicable to the development of IP-based competitive 911/E911 services. Section 230 of the Act provides "[i]t is the policy of the United States to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation."[88] Section 706(a) directs the Commission to encourage the deployment of "advanced telecommunications capability to all Americans" by using measures that "promote competition in the local telecommunications market" and remove "barriers to infrastructure investment" in developing new technologies and services for public use.[89] Fully endorsing and enabling IP-based competitive 911/E911 services fulfills both of these statutory duties.

CONCLUSION

In its 2005 *VoIP E911 Order*, the Commission observed that "the American public has developed certain expectations with respect to the availability of 911 and E911 emergency

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87 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, ¶ 4 (1996) (intervening history omitted), *aff'd in part, rev'd in part, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999).

88 47 U.S.C. § 230(b)(2).

89 *See A National Broadband Plan For Our Future* ¶ 110; *Appropriate Regulatory Treatment For Broadband Access To The Internet Over Wireless Networks*, 22 FCC Rcd 5901, ¶ 27 (2007).

services . . . ."[90] As communications technology has advanced, so have these expectations, to the point where the nation's citizenry can no longer be tolerant of a myriad of half-functional emergency calling options for their mobile or IP-based telecommunications devices. Nor can public safety agencies, witnessing the efficacy and utility of global information exchange in the private sector, easily restrict themselves to the few routing options offered by ILEC controlled 911/E911 systems. Competition - that driver of innovation and growth in the interexchange industry since 1996 - is the only means by which emergency communication services can effectively catch up, and the needs and desires of all stakeholders be fulfilled.

90 *VoIP E911 Order,* ¶ 6.

The Commission has paid witness to the value of competition in the telematics and Lifeline contexts. In addition to opening one of the last ILEC-dominated telecommunications services to competition, enabling competitive 911/E911 service will secure benefits both immediate (increased public safety and network reliability) and long-term (increased deployment of broadband and consequential benefits to IP-based service providers) that will flow from a seamless and ubiquitous nationwide 911/E911 infrastructure. It is now incumbent upon the Commission to use its considerable authority, as advocate for competition, overseer of the nation's emergency communications system, and architect of the nation's next-generation broadband network, to remove those last remaining barriers hindering competitive 911/E911 service.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Matthew L. Conaty, certify that on this 6th day of July 2009, I served a copy of the foregoing Comments of Intrado Inc. and Intrado Communications of Virginia Inc. on the following via the method indicated:

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Attachment 5

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings	)	WC Docket No. 08-33 WC Docket No. 08-185

REPLY COMMENTS OF INTRADO INC. AND INTRADO COMMUNICATIONS OF VIRGINIA INC.

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REPLY COMMENTS OF INTRADO INC. AND INTRADO COMMUNICATIONS OF VIRGINIA INC.

Intrado Inc. and Intrado Communications of Virginia Inc. (collectively, "Intrado"), respectfully make this submission in response to the comments filed in the above-captioned dockets, concerning the Federal Communications Commission's ("Commission" or "FCC") inquiry into "the specific issue of how competition in the provision of the 911 network to the [public safety answering points or] PSAPs and other public safety agencies would impact the provision of public safety services in Virginia."[1] The comments reflect that there is strong support for the further promotion of competitive 911 services, which in turn can deliver the benefits and advantages identified by commenters. In accordance with these comments, the Commission should take expeditious steps to issue a decision in the consolidated arbitration[2] and, without delaying such a decision or compromising the appropriate application of current law, consider initiating a "local competition" rulemaking relative to next generation 911 in competitive marketplace as proposed by the Texas 9-1-1 Entities and discussed more fully below.[3]

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[1] WC Docket Nos. 08-33 and 08-185, *Comment Sought On Competitive Provision of 911 Service By Consolidated Arbitration Proceedings*, 2 (rel. June 4, 2009).

[2] Such a decision should be consistent with proposals set forth by Intrado which will facilitate the rapid and competitive deployment of its 911/E911 services across the nation.

[3] WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Joint Comments of the Texas Commission on State Emergency

I. THE COMPETITIVE PROVISION OF 911/E911 NETWORK SERVICES IS STRONGLY SUPPORTED

A. The Commission's Statutory Mandate Supports the Promotion of the Deployment of Nationwide Competitive 911/E911 Services

In the comments of the Central Telephone Company of Virginia d/b/a Embarq and United Telephone Southeast LLC d/b/a Embarq (collectively, "Embarq"), it cautions the Commission against undertaking a serious consideration of competitive 911/E911 services.[4] Embarq overestimates the preclusive effects of the instant arbitration proceedings on the scope of the Public Notice and vastly underestimates the widely-acknowledged benefits of competitive 911/E911 services for the nation's evolving emergency telecommunications infrastructure. Congress laid the foundation for a broad reassessment of the conventional understanding of 911 service with its New and Emerging Technologies 911 Improvement Act of 2008 ("NET 911 Act"),[5] which is intended to bring about "the next step in th[e] evolution" of the 911/E911 system by "transition[ing] . . . the 911 infrastructure to an IP-enabled system. . . . [that] allows for greater flexibility in the types and amount of information that may be transmitted and shared by emergency service providers."[6]

The first steps in this direction have been taken by discrete competitive services, such as 911 database management services and evolving telematics systems. The kind of advancements needed in the nation's emergency communications system have not occurred in a monopolistic system.[7] As evidenced by the fact that this proceeding was established, what is required at this

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Communications, the Texas 9-1-1 Alliance, the Texas Municipal Emergency Communication Districts Association, the National Emergency Number Association, and the Association of Public Safety Communications Officials International, Inc. at 3 (filed July 6, 2009) ("Texas 9-1-1 Entities Comments").

[4] WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of Central Telephone Company of Virginia d/b/a Embarq and United Telephone Southeast LLC d/b/a Embarq at 5 (filed July 6, 2009) ("Embarq Comments").

[5] Pub. L. No. 110-283, 122 Stat. 2620 (2008).

[6] H.R. Rep. 110-442, 8 (2008), *reprinted in* 2008 U.S.S.C.A.N. 1011, 1013.

[7] *See* WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of The 9-1-1 Industry Alliance at 5 (filed July 6, 2009) ("9IA") ("For years, public safety agencies have had virtually only one choice for 9-1-1 products and services: the incumbent 9-1-1 service provider. Incumbent providers have exercised exclusive, often unilateral discretion as to what those products and services will be and, due to the natural outcomes of

time is either heavy-handed government intervention to compel incumbent 911 providers to make substantial investments to catch up - a notion that seems infeasible economically and one not likely to meet the nation's expectation for timing - or light-handed guidance by reasonably-minded regulators willing to pave the way for true competition. Further competition from the rapid deployment of 911 services using systems - like Intrado's Intelligent Emergency Network®[8] - will build on the discrete competitive 911 services and the benefits achieved to date.[9]

The Texas 9-1-1 Entities reinforce that Commission guidance in the competitive provision of 911/E911 services will aid the "modernization of current 9-1-1 networks toward Internet Protocol-enabled ("IP-enabled") and Next Generation 9-1-1 ("NG9-1-1") systems . . . necessary to keep up with increasing consumer expectations and new communications technologies."[10] The Michigan Internet & Telecommunications Alliance ("MITA") and TelNet linked "[i]nnovative 911 networks [that] will provide public safety agencies with the services and applications to manage more accurate and specific information at greater speed and increased efficiency," overcoming the limitations of "outdated analog technology" and linking

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rate of return regulation, incumbents have had no incentive to innovate in the 9-1-1 space as they have in other sectors.").

[8] As explained in Intrado's Initial Comments, Intrado's Intelligent Emergency Network® "provides the means for seamlessly integrating IP-based voice and data information into the nation's existing 911/E911 network, which allows new applications, like texting and video to be integrated into the 911 system, addresses network congestion and disabled PSAPs through the establishment of dynamic call routing and 'virtual PSAPs,' facilitates ubiquitous exchange of a wide array of emergency-related data between PSAPs and emergency responders, regardless of the originating communications platform, and promotes cooperation between PSAPs and public safety agencies." Intrado Comments at 3.

[9] *See Virgin Mobile USA, L.P. Petition for Forbearance from 47 U.S.C. § 214(E)(1)(A)*, 24 FCC Rcd 3381, ¶¶ 12, 19 (2009) ("We also believe that this competition will spur innovation amongst carriers in their Lifeline offerings, expanding the choice of Lifeline products for eligible consumers"); *Applications for Consent to the Transfer of Control of Licenses XM Satellite Radio Holdings Inc., Transferor To Sirius Satellite Radio Inc., Transferee*, 23 FCC Rcd 12348, ¶ 128 (2008) (emphasizing "principle of openness" in ameliorating oligopolistic competition); *Sprint Nextel Corporation and Clearwire Corporation*, Applications for Consent to Transfer Control of Licenses, Leases, and Authorizations, 23 FCC Rcd 17570 (2008) (separate statement of Commissioner Copps) (same); *Global Mobile Personal Communications by Satellite (GMPCS)*, Report and Order and Second Notice of Proposed Rulemaking, 18 FCC Rcd 25340, ¶ 72 (2003) (describing technological achievements of competitive telematics providers exceeding Commission E911 accuracy requirements).

[10] Texas 9-1-1 Entities Comments at 3.

such now-"standard form[s] of communication" as text messaging to the 911 network.[11] The Public Utilities Commission of Ohio ("PUCO") noted the manifest benefits available to PSAPs through competition, including "the opportunity to contract with entities that provide most advanced 9-1-1 available, regardless of technology" and the chance to "obtain services tailored more specifically to each county's or PSAP's needs."[12] The 9-1-1 Industry Alliance ("9IA") also "strongly supports institution of competitive 9-1-1 services and believes any impacts are far outweighed by the benefits."[13] 91A explained that "America's 9-1-1 system 'has not evolved effectively as technological change [has] transformed our system of telecommunications.' 'Today's 9-1-1 system is built on an infrastructure of analog technology that does not support many of the features that most Americans expect are part of an emergency response.'"[14] It noted further that "9IA's members have invested heavily in the solutions that they offer today and that they will offer in the coming months. These are the very solutions that must be brought to market in order to make that migration possible; yet many of 9IA's enterprise members continue to face challenges rooted in a delivery model controlled by incumbent 9-1-1 services providers." [15]

As MITA and TelNet observed, "this consolidated proceeding represents a significant opportunity for the Commission to support a framework that will advance innovation in the nation's public safety."[16] The Commission should fully avail itself of the opportunity to secure all the advantages of competitive 911/E911 service by leading the states to determine the shape the nation's twenty-first century emergency telecommunications network in a manner that will

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11 WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of the Michigan Internet & Telecommunications Alliance and TelNet Worldwide, Inc. at 4 (filed July 6, 2009) ("MITA/TelNet Comments").

12 WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of the Public Utilities Commission of Ohio at 7-8 (filed July 6, 2009) ("PUCO Comments").

13 9IA Comments at 2.

14 *Id.*

15 *Id.* at 4.

16 MITA/TelNet Comments at 2.

result in a truly cohesive reliable, redundant nationwide system for the benefit of all Americans.[17]

B. Competitive 911/E911 Service Should Not Be Delayed Pending the Outcome of General Rulemaking

While Intrado supports a thorough exploration of the best ways in which competitive 911/E911 service can be leveraged according to federal and state goals, its deployment should not be legally constrained or delayed by a lengthy general rulemaking proceeding. Although such rulemaking may effectively address stakeholder policy concerns, it should serve as neither a prerequisite for a decision on the instant arbitration matters nor an impediment to the rapid rollout of nationwide 911/E911 service competition.

General rulemaking may be a useful means of promulgating a progressive framework for competitive 911 services, but it is wholly separate from the pending arbitration, which turns on a "mutually beneficial co-carrier arrangement for interconnection of their networks pursuant to Section 251(c)."[18] Emphasizing the FCC's leading role in effectuating "the federal interest" in

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[17] The Commission should reject Verizon's claim that "general policy matters" pertaining to the implementation of competitive 911/E911 services are "properly left to the [state] entities already charged with the development of 911 policies . . ." for the reasons it has previously clearly stated. WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of Verizon at 8 (filed July 6, 2009) ("Verizon Comments"). *See, e.g., E911 Requirements for IP-Enabled Service Providers*, 20 FCC Rcd 10245, ¶ 29, n. 95 (2005) ("*VoIP E911 Order*") ("[W]hile we acknowledge that there are generally intrastate components to interconnected VoIP service and E911 service, we reject any argument that 911/E911 services are purely intrastate and therefore the Commission has no jurisdiction in this area"); Wireless Communications and Public Safety Act of 1999 House Report, H. R. Rep. No. 106-25, 7-8 (1999) ("One section of the legislation directs the FCC to play a much more assertive role in encouraging and assisting the States to deploy these advanced safety systems. . . . The Committee's strong intent is that the Commission must lead, identifying and seeking solutions to overcome barriers for the implementation of end-to-end emergency communications systems."). The Commission has already undertaken substantial efforts to shape the evolving 911 system, especially in regards to the incorporation of new technologies such as prepaid calling cards, mobile satellite systems, and VoIP. *See* Intrado Comments at 19-24; *see also* 9IA Comments at 4-5 ("Another challenge is that the public safety community in the United States is comprised of a multitude of state and local government agencies. . . . [who] are often hampered by political or statutory constraints, and more notably, they are fractured jurisdictionally and geographically which is particularly instructive with respect to the fact that monopoly 9-1-1 service providers often have regional authority.")

[18] WC Docket No. 08-33, *Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Embarq")* at 5 (Aug. 13, 2008); WC Docket No. 08-185, *Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc.* at 4 (Dec. 15, 2008).

"a successor IP-enabled 9-1-1 network and NG9-1-1 systems technologies," the Texas 9-1-1 Entities Comments call for the promulgation of "a comprehensive 'local competition' type order on 9-1-1 network services and IP-enabled 9-1-1 and NG9-1-1 systems," perhaps even "a stand-alone docket to consolidate all issues related to the transition to NG9-1-1."[19] In "working cooperatively with states" to craft such a comprehensive order, the Commission would necessarily take into account the needs of state and local public safety authorities nationwide in a neutral fashion, mitigating "the unreasonableness of seeking to prejudice the rights of public safety entities in arbitration proceeding rulings."[20] Nonetheless, the Commission has the ability to address the discrete interconnection issues in this arbitration on an expedited basis in favor of Intrado, without delivering a comprehensive verdict on "complex factors related to institutional and service arrangements, equipment and infrastructure, and funding."[21] As the Independent Telephone & Telecommunications Alliance ("ITTA") explained, "the instant arbitration proceedings must first address the question of whether Intrado is entitled to interconnection under Section 251(c)(2). . . . although the Commission should address the question of potential impacts of competitive 911 service, that matter is best addressed in a proceeding dedicated to that issue."[22] As a matter "governed by existing law . . . [it] should be addressed within the adjudicatory process of the arbitration proceedings that have been deferred to the Commission."[23]

General rulemaking is also the best place to address issues of funding. As the ITTA pointed out, "[m]any issues are implicated by the compact questions presented by the Public Notice," such as whether "competitive provision of 911 services [should] be affected by state or

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19 Texas 9-1-1 Entities Comments at 7-9, n. 22.

20 *Id.* at 10-11.

21 *Id.* at 14 (citing Next Generation 9-1-1 System Initiative - Final Cost, Value and Risk Analysis Executive Summary, http://www.its.dot.gov/ng911/ng911_pubs.htm).

22 WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration* Proceedings, Comments of the Independent Telephone & Telecommunications Alliance at 2 (filed July 6, 2009) ("ITTA Comments").

23 *Id.* at 5.

local funding mechanisms, or other local-level regulations," or "whether, or how, end-user customers that pay the 911 fees might be affected."[24] The Commission's responsibilities on these issues under such statutes such as the NET 911 Act contemplate broad oversight rather than case-by-case adjudication.[25] It is thus necessary for the Commission to "first settle the legal questions presented by the arbitration before moving on to the policy questions that may, or may not, subsequently arise."[26]

The overall implementation of competitive 911/E911 services should not in any case be delayed by detailed rulemaking addressing technical concerns. Though Intrado concurs with the ITTA that the Commission must promptly settle outstanding interconnection issues in the instant proceeding, it disagrees with the conclusion that the Commission must determine "how a particular provider's platform would affect a PSAP operator's equipment needs, reliability in routing, and changes in transport costs, all of which will ultimately need to be recovered through 911 fees assessed to the customers" before sanctioning a "competitive 911 service provider's service offering."[27] From the date of its implementation, the 911 network has rejected hard and fast technical standards in the name of flexibility, adaptability, and immediate usability. As FCC Defense Commissioner Lee Loevinger observed in 1968, "[i]t is conceded that there may very well be better systems developed in the future, and new techniques and new equipment may permit means of employing the telephone which are not now practical. However, the 911 plan has been devised and offered by the Bell System as *a plan that is practical and immediate*, and that can be put into operation quickly. *It is not offered as a final and unchangeable system*."[28]

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[24] *Id*.

[25] *See, e.g., Information Collection Mandated by the New and Emerging Technologies Improvement Act of 2008*, Public Notice, 24 FCC Rcd 1344 (2009).

[26] ITTA Comments at 6.

[27] *Id.* at 5.

[28] Lee Loevinger, *The Universal Emergency Service Number - The Problems and Some Answers -*, Lee Loevinger Correspondence (Feb. 27, 1968), http://www.911dispatch.com/911/history/loevinger_letter1.html.

Much of the Commission's federal role in regards to 911/E911 service is thus one of "encourag[ing] the most efficient and effective technologies" in regards to accurate and advanced emergency communications service.[29] Specific technological implementation may be delegated downward to the regional, state or local level,[30] as "the subject of emergency calls is an area that the Commission has traditionally left to the states."[31] As the House Report for the 911 Act noted, encouragement and assistance in the development and implementation of end-to-end systems envisions direct "consult[ation] with key State officials (the heads of the lead agencies affected, *e.g.*, State public safety, State EMS, and the like), key local officials (*e.g.*, heads of 911 agencies), and a variety of other stakeholders ranging from medical professionals to transportation officials to automobile consumer groups," as the "key stakeholders" best equipped to tailor new technologies to local needs.[32] Technical concerns may also properly be left to industry, as the Commission has done in the commercial mobile alert system,[33] telematics,[34] and mobile radio service contexts.[35] Ultimately, the PSAPs, positioned at the nexus

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[29] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, Memorandum Opinion and Order, 12 FCC Rcd 22665, ¶ 5 (1997).

[30] Likewise, the Commission has refrained from "limiting or prohibiting the States in the creation of cost recovery procedures that include carriers' expenses, or preempting any existing cost recovery legislation." *Revision of the Commission's Rules to Ensure Compatibility with Enhanced Emergency 911 Calling Systems*, Second Order on Reconsideration, 14 FCC Rcd 20850, ¶ 54 (1999) ("*E911 Second Order*").

[31] *Policies and Rules Concerning Operator Service Providers*, Report and Order, 6 FCC Rcd 2744, ¶ 1 (1991) ("establish[ing] rules for operator service providers (OSPs) and call aggregators regarding consumer information, call blocking, restrictions on certain charges, and equipment capabilities"); *see also* H. R. Rep. No. 106-25, 8 (1999) (while the "end-to-end emergency communications systems contemplated by the [911 Act] cannot be entirely developed in many or most cases on a city by city, or county by county basis . . . local government will play a central planning and implementation role").

[32] H.R. Rep. No. 106-25, 8.

[33] *Commercial Mobile Alert System*, First Report and Order, 23 FCC Rcd 6144, ¶ 24 (2008), *order corrected on recons. by* 23 FCC Rcd 11669 (2009) ("We support the technical protocols and specifications for the delivery of alerts recommended by the [Commercial Mobile Service Alert Advisory Committee] in this section. . . . [and] conclude that final determination of these interface protocols is better left to industry standards organizations").

[34] Intrado Comments at 5.

[35] *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Notice of Proposed Rulemaking, 9 FCC Rcd 6170, ¶ 40 (1994) ("While we do not anticipate adopting extensive technical standards for enhanced 911 operation-- *industry standards-setting committees are better equipped to address precise technical requirements for enhanced 911 compatibility* --we propose that general performance criteria be adopted.") (emphasis added).

of state and local emergency concerns, may be the best equipped to assess its own needs in regard to routing and cost recovery vis-à-vis emerging emergency technology, obviating the need for Commission analysis of these issues in the case of the burgeoning 911/E911 service provider.[36]

II. PROVIDERS OF COMPETITIVE 911 SERVICES WILL BRING THE FULL BENEFITS OF COMPETITION TO PSAPS AND 911 CALLERS MORE SWIFTLY AND COMPREHENSIVELY WITH INTERCONNECTION ARRANGEMENTS THAT RECOGNIZE THE UNIQUE NATURE OF 911 SERVICES

As Intrado explained in its initial comments, there are a myriad of benefits that Internet protocol ("IP") can be bring to existing 911/E911 services, with resulting benefits to consumers and public safety agencies alike. An architecture that provides for seamless and platform-independent integration of IP-based voice and data into conventional emergency networks is the foundation for the future of emergency communications. Several commenters evinced similar conclusions. The Washington State Enhanced 911 Program, for example, depicted "[t]he move to Internet Protocol based call management for 9-1-1" as a natural outgrowth of the diversifying competitive telecommunications market, a "continu[ation] [of] the trend toward[s] multiple source availability for the elements needed to provide 9-1-1 services."[37] In explaining the need for a "local competition" type order for emerging 911 technologies, the Texas 9-1-1 Entities Comments explained that "in IP-enabled 9-1-1 and NG 9-1-1 systems, the core operating system and intelligence of the 9-1-1 CPE functionality may be in a hosted location within what might have been thought of in the past as the 9-1-1 network."[38] Accordingly, "9-1-1 will increasingly

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[36] *See E911 Second Order*, ¶ 23 ("We note here that we do not dictate the funding approach to be used. The key is that PSAPs have a source of funds sufficient to support E911, not that any particular funding approach is employed."); *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Fifth Memorandum Opinion and Order, 15 FCC Rcd 22810, ¶ 24 (2000) ("As we concluded, by removing the cost recovery issues that were obstacles to such implementation, carriers and the states or PSAPs could better resolve these and related differences, such as technology choice, to accelerate implementation.").

[37] Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of the Washington State Enhanced 911 Program at 2 (July 6, 2009) ("Washington Comments").

[38] Texas 9-1-1 Entities Comments at 15.

be one application on shared emergency services IP networks ("ESInets") as opposed to single-purpose 9-1-1 networks."[39]

The journey to this nationwide network of multiple source, IP-based emergency services must of necessity begin with one step - that of meaningful interconnection that recognizes 911/E911 system's special need for reliable and consistent operation.[40] Intrado agrees with the Washington State E911 Program's observation that "a discussion of appropriate regulatory changes" is necessary "to forward a competitive 9-1-1 services environment."[41] As 911/E911 service begins to enter "a competitive arena," it is indeed to "the long term benefit of the public [that] the rules that govern the relationship between those who assure that their customers can dial 911 and those who acquire the 9-1-1 networks . . . be clarified."[42] Incumbent local exchange carrier ("ILEC") control over a monolithic 911/E911 network has waned over the course of the past several decades,[43] as competitive service providers have exercised management over portions of it - Intrado, for example, has provided 911 database management systems to all major ILECs for over 20 years. As full scale competition proceeds apace, it is necessary for the Commission to ensure that competitive 911/E911 networks can integrate themselves into

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39 *Id.* at 14.

40 *See, e.g., Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Services*, Second Report and Order, 14 FCC Rcd 10954, ¶ 2 (1999), *recons. granted in part by* 15 FCC Rcd 1144 (2000) (adopting rules to "improve 911 reliability [and] increase the probability that 911 calls will be efficiently and successfully transmitted to public safety agencies"); Wireless Communications and Public Safety Act of 1999, Pub. L. No. 106-81, 113 Stat. 1286 (1999) (expressing statutory intent to create a "seamless, ubiquitous, and reliable end-to-end infrastructure for communications, including wireless communications, to meet the Nation's public safety and other communications needs"); *see also Recommendations of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks*, Order, 22 FCC Rcd 10541, ¶ 96 (2007) ("*Katrina Order*"), *extended* 22 FCC Rcd 14246 (2007), *order clarified on reconsideration*, 22 FCC Rcd 18013 (2007) (goal of ensuring that "Americans have access to a resilient and reliable 911 system irrespective of the technology used to provide the service").

41 Washington Comments at 4.

42 *Id.* at 2.

43 *See* 9IA Comments at 5 ("For years, public safety agencies have had virtually only one choice for 9-1-1 products and services: the incumbent 9-1-1 service provider. Incumbent providers have exercised exclusive, often unilateral discretion as to what those products and services will be and, due to the natural outcomes of rate of return regulation, incumbents have had no incentive to innovate in the 9-1-1 space as they have in other sectors.").

existing ILEC 911/E911 networks just as seamlessly and effectively as have other competitive services. There is no practical or highly safe method to introduce to the public safety marketplace an alternative, competitive system, unless legacy and next generation networks interoperate -- for at least some period of time. Ensuring interconnection between those systems - prior to having answered all the policy questions - is the only realistic means by which competition can be introduced. Just as the ILEC emergency communications network has subsumed competitive automatic number identification ("ANI") or master street address guide ("MSAG") services without loss of quality or functionality for consumers, so too must "any public telecommunications services that permit connecting to the 9-1-1 network have the capability to provide the anticipated service level and features associated with calls to 9-1-1."[44] As Intrado observed in its initial comments, increased redundancy, enhanced reliability, and an end to the artificial limitations of ILEC geographic service areas can be immediately achieved through the use of competitive 911/E911 services, but only if the Commission acts to "balance the Congressional intent of furthering competition in an equitable manner, as expressed in the 1996 Telecommunications Act, with the need to maintain the integrity of the network."[45]

Accordingly, the Commission must ensure "that all service providers have an obligation to, at their expense, connect to the 9-1-1 networks with both the call and the associated data elements delivered to the 9-1-1 system."[46] Today, ILECs typically require CLECs to:

- establish interconnection at a point on the ILEC's network for the transmission and routing of plain-old telephone service ("POTS") traffic[47] with each party being responsible for the transport facilities on its side of that point of interconnection ("POI")[48] ***and***

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44 Washington Comments at 3.

45 PUCO Comments at 4.

46 Washington Comments at 3.

47 *See, e.g.*, Verizon Template Interconnection Agreement, 911 Attachment § 1; AT&T 22-State Template Interconnection Agreement, Appendix NIM.

48 *See, e.g.*, Verizon Template Interconnection Agreement, 911 Attachment § 2.1; AT&T 22-State Template Interconnection Agreement, Appendix NIM.

- to interconnect with each ILEC 911/E911 selective router that serves the exchange areas in which the CLEC offers service[49] ***and***
- to provide a minimum of two one-way outgoing 911/E911 trunks over diversely routed facilities that are dedicated for originating 911/E911 calls from the CLEC's switch to each designated ILEC 911/E911 selective router[50] ***and***
- to compensate the ILEC for the provision of 911/E911 services[51]

Given the importance of interoperability between ILEC and CLEC networks in regards to reliable and efficient 911/E911 service - and the evident utility of these ILEC requirements in achieving it - the Commission should insist on equivalent arrangements between ILECs and competitive 911/E911 services.[52] This is simple parity, reflective of the Commission's long-standing requirement that CLECs (and now, competitive 911/E911 services) should receive interconnection in the same manner that incumbents provide such service to themselves.[53]

The Commission should also heed the Washington State Enhanced 911 Program's call for "a standard point of demarcation for 9-1-1 in conjunction with the requirement that all provide 9-1-1 dialing under the same terms" in order to "forward competition while removing any potential conflicts between carriers selected by public safety entities to provide 9-1-1 system

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49 *See, e.g.*, Verizon Template Interconnection Agreement, 911 Attachment § 3.2.1; AT&T 22-State Template Interconnection Agreement, 911 Attachment §§ 4.1.1, 4.1.2 (stating that "CLEC will transport the appropriate 911 calls from each Point of Interconnection (POI) to the appropriate AT&T-22STATE E911 SR location" and "CLEC shall be financially responsible for the transport facilities to each AT&T-22STATE E911 SR"); Embarq Template Interconnection Agreement at § 55.1.3 (stating "Separate trunks will be utilized for connecting CLEC's switch to each 911/E911 tandem").

50 *See, e.g.*, Verizon Template Interconnection Agreement, 911 Attachment § 3.2.2; AT&T 22-State Template Interconnection Agreement, 911 Attachment § 4; Embarq Template Interconnection Agreement at § 55.1.3 (stating "Separate trunks will be utilized for connecting CLEC's switch to each 911/E911 tandem").

51 *See, e.g.*, Verizon Template Interconnection Agreement, 911 Attachment § 4.2; AT&T 22-State Template Interconnection Agreement, Pricing Appendix.

52 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 15499, Report and Order, ¶ 554 (1996) ("Local Competition Order") (intervening history omitted), *aff'd, AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) (holding that "if a particular method of interconnection is currently employed between two networks, or has been used successfully in the past, a rebuttable presumption is created that such a method is technically feasible for substantially similar network architectures").

53 *See generally Id.*

management and the carrier provided obligatory 911 dialing capability."[54] The Commission may easily do so by acting in accordance with its *King County* decision, which established that the "cost-allocation point" for the exchange of 911/E-911 traffic should be at the selective router, pursuant to the "the nature and configuration of the existing network components used to provide wireline E-911 service," as well as PSAP comments stating that the selective router was the proper point for allocating responsibility and associated costs between carriers.[55] Given the "primary responsibility" vested in state governments for ensuring 911/E911 availability, and the fact that "different states have taken different approaches to meeting that responsibility," [56] a universally applied framework is needed for a consistent nationwide 911/E911 service to become a reality. Features critical to a truly seamless emergency communications system, such as inter-PSAP call transfers and automatic location steering, can only be ensured by bringing 911 calls to the 911 network through the very equipment that analyzes and distributes them.[57] Only through the adoption of a standard point of demarcation - one that has been consistently validated and utilized by the ILECs themselves[58] - can the Commission implement Ohio's technology-independent "interoperability across carriers, systems, and/or county boundaries" on a nationwide basis.[59]

Commercial agreements - those typically favored by ILECs when confronting interconnection with a competitive 911/E911 network - are not sufficient to secure the "diverse,

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54 Washington Comments at 3.

55 *Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems – Request of King County, Washington,* Order on Reconsideration, 17 FCC Rcd 14789, ¶¶ 1-2, 4, n.4 (2002) ("*King County*").

56 PUCO Comments at 6-7.

57 WT Docket No. 94-102, Letter from Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, to Marlys R. Davis, E911 Program Manager, Department of Information and Administrative Services, King County, Washington, King County, Washington Request Concerning E911 Phase Issues (rel. May 7, 2001).

58 *Local Competition Order* ¶ 204 (holding that successful interconnection or access at a particular point in a network, using particular facilities, is substantial evidence that interconnection or access is technically feasible at that point ***or at substantially similar points in networks employing substantially similar facilities***).

59 Ohio Comments at 7.

interoperable facilities" AT&T claims are vital to the evolving 911 network,[60] as evidenced by protracted arbitration over basic terms.[61] One-sided agreements, written in such a way as to maximize the ILEC's revenue streams from its dominant control over the legacy 911 service and minimize its interconnection responsibilities,[62] can raise what the Public Utilities Commission of Ohio described as "a legitimate concern regarding how the existence and operations of a

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[60] WC Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of AT&T, Inc. at 4 (filed July 6, 2009) ("AT&T Comments").

[61] Embarq states that its constituent "companies and Intrado have successfully reached a commercial agreement in Florida, as well as agreed to certain commercial terms in Ohio, pursuant to Section 251(a), demonstrating the parties' ability to reach mutually agreeable interconnection terms outside of Section 251(c)." Embarq Comments at 6. Embarq's comments fail to take notice of the long arbitration process that occurred before the PUCO, as a result of which Intrado was afforded key interconnection arrangements that were used as the bases for the Florida 251(a) agreement. PUCO Comments at 6. Verizon claims that Intrado does not require "uniquely favorable interconnection arrangements to provide its 911 services." Verizon Comments at 9. AT&T echoes Verizon's statement and claims that "[c]ommercial negotiations for wholesale inputs are appropriate mechanisms to enable carriers and SSPs [system service providers] to make the necessary arrangements at mutually acceptable prices." AT&T Comments at 9. All of these claims ignore the myriad arbitration proceedings that Intrado has entered into in an attempt to deploy its competitive 911/E911 services. Negotiations with Verizon, for example, have failed to secure the facilities and services vital to effective 911/E911 competition, as demonstrated by the fact that they have given rise to no fewer than *eight* arbitration proceedings. *See* Delaware Docket No. 08-61, *Petition of Intrado Communications Inc. for Arbitration Pursuant to §252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon Delaware LLC*, Petition for Arbitration (filed Mar. 5, 2008); Florida Docket No. 080134-TP, *Petition by Intrado Communications Inc. for Arbitration to Establish an Interconnection Agreement with Verizon Florida LLC, Pursuant to § 252(b) of the Communications Act of 1934, as amended, and § 364.162, F.S.*, Petition for Arbitration (filed Mar. 5, 2008); Illinois Docket No. 08-0550, *Petition of Intrado Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North Inc. and Verizon South Inc.*, Petition for Arbitration (filed Sept. 24, 2008); Maryland Case No. 9138, *Petition of Intrado Communications Inc. for Arbitration Pursuant to § 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon Maryland Inc.*, Petition for Arbitration (filed Mar. 5, 2008); North Carolina Docket No. P-1187, Sub 3, *Petition of Intrado Communications Inc. for Arbitration Pursuant to § 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. d/b/a Verizon North Carolina*, Petition for Arbitration (filed Mar. 5, 2008); Ohio Case No. 08-0198-TP-ARB, *Petition of Intrado Communications Inc. for Arbitration Pursuant to § 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon North Inc.*, Petition for Arbitration (filed Mar. 5, 2008); Texas Control No. 36185, *Petition of Intrado Inc. for Arbitration Pursuant to Pursuant to § 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with GTE Southwest Inc. d/b/a Verizon Southwest*; West Virginia Docket No. 08-0298-T-PC, *Intrado Communications, Inc., and Verizon West Virginia Inc. Petition for Arbitration of Certain Rates, Terms and Conditions for Interconnection and Related Arrangements with Verizon West Virginia Pursuant to § 252(b) of the Communications Act of 1934, as amended, and Commission Rule 150-6-15*, Petition for Arbitration (filed Mar. 5, 2008).

[62] In commercial negotiations, for example, the ILEC directly controls the pace of the negotiations, such as by taking an "all or nothing" approach, refusing to provide language as a starting point for negotiations, or simply rejecting any Intrado-proposed language. These negotiating tactics only further delay public safety's ability to utilize a competitive provider.

competitive 911 carrier affects the public interest in a reliable, efficient, and effective network."[63] To this end, MITA and TelNet attribute "a lack of competition in the E911 market" to ILEC actions that "have thwarted CLEC efforts to obtain and offer competitive 911 services to its customers. . . . limit[ing] competition and creat[ing] technical and financial bottlenecks to hinder numerous aspects of competitive 911 service."[64] Commercial agreements forestall the implementation of "advanced network technology," pursuant to the pecuniary priorities of "incumbents that seek to protect their monopoly positions by exploiting their control over the emergency telecommunications network."[65] Intrado wholeheartedly agrees with MITA and TelNet in their frank assessment that "[s]uch actions" and such unbalanced agreements are "contrary to the spirit of Congress as embraced by the 911 legislation of the past decade."[66]

Arguments concerning the high cost of implementing non-commercial arrangements are unavailing. Verizon claims that Intrado's proposed interconnection arrangements "would effectively shift some of the costs of Intrado's 911 services to Verizon and other carriers and give Intrado an unfair advantage over its competitors."[67] The Virginia Telecommunications Industry Association makes a similar point in detailing an apparent example of Intrado's "competitive advantage" and cost shifting in the state of Virginia.[68] Intrado is not seeking any

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63 PUCO Comments at 6.

64 MITA/TelNet Comments at 2.

65 *Id.* at 3.

66 *Id.* at 2.

67 Verizon Comments at 6.

68 Docket Nos. 08-33 and 08-185, *Competitive Provision of 911 Service Presented by Consolidated Arbitration Proceedings*, Comments of the Virginia Telecommunications Industry Association at 3 (filed July 6, 2009). The Association's comments concerning Intrado's intention to establish a point of interconnection for Franklin County at Raleigh, North Carolina are inaccurate. Intrado will be conducting a pilot or trial with Franklin County. Intrado has not deployed its selective routers in Virginia yet as it does not have interconnection agreements with any VA ILECs. As Intrado has testified in numerous arbitrations, it intends to have selective routers in every state it has PSAP customers. *See Petition for Arbitration to Establish an Interconnection Agreement with Bellsouth Telecommunications, Inc., dba AT&T North Carolina,*, Hearing Transcript Vol. 1, 231 (Aug. 13, 2008) ("AT&T North Carolina Arbitration Transcript") (noting Intrado's policy of "put[ting] a minimum of two in every state"); *see also, e.g.*, DTC 08-9, *Intrado Communications, Inc. - Verizon New England*, Hearing Transcript Vol. 1, 87 (Jan. 28, 2009); No. 08-0545, *Petition for Arbitration pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Illinois Bell Telephone Company*, Hearing Transcript, 70 (Dec. 3, 2008); Case No. 07-1280-TP-ARB, *Petition of*

sort of competitive advantage, but merely the universal and equitable implementation of the interconnection arrangement designed and instituted by ILECs,[69] established and verified by the PUCO[70] for competitive 911 service to Ohio PSAPs, and validated by the Commission under *King County*. Further cost prognostications - such as unsupported predications of Commission interference with state funding and planning boards - overlooks the Commission's crucial (but limited) state 911 funding oversight and reporting function under the NET 911 Act.[71]

The prospective cost concerns voiced by ILECs are likely a protest against the deprivation of a lucrative monopoly revenue stream. At present, CLECs are required by ILECs to bear all costs associated with reaching the ILEC-served PSAPs, with no possibility of recovery from the state 911 fund. As the sorts of non-commercial interconnection arrangements contemplated by the PUCO are adopted, both competitors and incumbents will incur trunking and routing costs in building out to particular interconnection points, and current state funding arrangements will either be altered or wholly disappear.[72] As MITA and TelNet observed,

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Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934 *as amended, to Establish an Interconnection Agreement with the Ohio Bell Telephone Company dba AT&T Ohio*, Hearing Transcript Vol. 1, 43-48 (Oct. 14, 2008); Docket No. 070736-TP, *Petition by Intrado Communications, Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with Bellsouth Telecommunications, Inc. d/b/a AT&T Florida, Pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162 F.S., and Rule 28-106.201, F.A.C.*, Hearing Transcript Vol. 2, 192-93 (July 10, 2008); Docket No. 070699-TP, *Petition by Intrado Communications Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with Embarq Florida, Inc., Pursuant to Section 252(b) of the Communications Act of 1934, as Amended, and Section 364.162, F.S.*, Hearing Transcript Vol. 1, 124-25 (July 9, 2008). This will include Virginia. The pilot, however, will permit Intrado and Franklin County to begin important preliminary testing of the system and services prior to service activation.

[69] This includes the use of direct, dedicated connections for the transport of 911/E911 calls. In commercial negotiations, the ILECs are demanding the ability to "transit" 911 calls from other carriers. As evidenced by the ILECs' current 911 interconnection arrangements, such network arrangements have never been contemplated or employed for emergency communications due to the increased risk of call failure.

[70] *See* PUCO Comments at 5-6.

[71] *See Implementation of the NET 911 Improvement Act of 2008*, Report and Order, 23 FCC Rcd 15884, ¶ 31 (2008) (detailing polling and reporting functions for states and holding that the Commission has no responsibility "to issue detailed regulations regarding the pricing methodology under which E911 capabilities must be made available" in light of Congressional direction to ensure that attendant "rates, terms, and conditions must *in all instances be reasonable*") (emphasis in original).

[72] *See, e.g.*, Ohio Case No. 07-1199-TP-ACE, *Application of Intrado Communications Inc. to Provide Competitive Local Exchange Services in the State of Ohio*, Entry on Rehearing at 10 (Apr. 2,

incumbents have every reason to employ their "overwhelming economic power" and "systematic 'go ahead and sue me' attitude" to prevent such an occurrence.[73] TelNet explained its own disastrous experience in attempting to purchase E911 service and facilities from a competitive provider. The incumbent, it explained, "refused to process TelNet's disconnection orders and continued to charge TelNet for such no longer needed service," threatening trunk disconnection upon non-payment that would have effectively ended TelNet's business. Insisting that TelNet "maintain dedicated trunks to each selective router and that 911 traffic from no CLEC other than TelNet could be combined and transported on such trunks," the incumbent effectively "maximized [its] revenue at the expense of each CLEC in the state and prevented the development of a more robust and flexible wireline E911 to protect the public."[74] Thus, Verizon's claim that "Intrado's proposal would negatively affect every carrier that sends 911 calls to Intrado-served PSAPs. . . . [because all] other carriers would have to implement the same direct-trunking/mystery end-office call-sorting arrangements Intrado demands of Verizon here"

2008) ("the Finding and Order in this case addresses the pricing of an enhanced, next generation 9-1-1 system, which incorporates new costs not previously contemplated by the Commission and not currently being recovered by State and subscriber-funded investment"); Ohio Case No. 08-287-TP-UNC, *Petition of the NENA/APCO Joint Task Force Requesting the Commission to Promulgate Rules and Set Standards Governing Next Generation 9-1-1 in a Competitive 9-1-1 Market*, NENA/APCO Petition for Rulemaking at Attachment A (filed Mar. 21, 2008) (requesting a rulemaking to address "[p]arity among all providers and with respect to multiple topics, including funding and interconnection rights to mention just a couple, [which] remains an important policy goal necessary to balance the need to maintain high standards with the need to preserve a level playing field"); Ohio Case No. 08-287-TP-UNC, *Petition of the NENA/APCO Joint Task Force Requesting the Commission to Promulgate Rules and Set Standards Governing Next Generation 9-1-1 in a Competitive 9-1-1 Market*, Letter from Ronald W. Bien, Hamilton County, Ohio, to Renee Jenkins, PUCO at 2 (filed May 9, 2008) ("Ohio's 'bill and keep' rules currently impede public safety's ability to realistically choose a competitive provider. Using Hamilton County as an example: CBT is allowed to bill and keep wireline surcharges if they are providing 9-1-1 service to Hamilton County. If Hamilton County engages a CESTC (as it has done), there is no current mechanism by which Hamilton County or its CESTC can step into CBT's shoes to collect those wireline surcharges. . . . Hamilton County urges the Commission to evaluate and take necessary steps to remove these barriers."); 9-1-1: The Next Generation, 9-1-1 MAGAZINE (January/February 2007) (noting that current funding methodologies serve as a roadblock to enabling next generation 911 services); *see also* New and Emerging Technologies 911 Improvement Act of 2008, Pub. L. No. 110-283 (acknowledging that a review of 911 funding issues will be necessary to effectively implement nationwide 911 services by requiring the Commission to evaluate state funding methodologies and report to Congress); *see id*. (requiring the E-911 Implementation Coordination Office to develop and report to Congress on a national plan for migrating to a national IP-enabled emergency network, including identification of barriers that must be overcome and the funding mechanisms to address those barriers).

[73] MITA/TelNet Comments at 3-4.

[74] *Id.* at 3.

rings true only for the entity that has heretofore maintained an exclusive grip on 911 service provision to PSAPs and interconnection.[75] 9IA also addressed Verizon's overstated and unsupported claims. "While a model that involves multiple 9-1-1 service providers could drive some initial non-recurring costs to 're-home" inbound circuits' (access to selective router),[76] those costs will diminish, be offset, and eventually reduced as a result of implementing a NextGen 9-1-1, IP-based network architecture, *i.e.*, decreased number of circuits needed and decreased costs to interconnect and interoperate with another IP-based system (as compared to costs in a legacy environment)."[77]

Intrado therefore urges the Commission to adopt the conclusion of the PUCO in declaring that Sections 251 and 252 of the Communications Act of 1934, as amended (the "Act") "provide sufficient flexibility to accommodate" the interests of the several states in an "efficient reliable and effective 911 system" and in "new or emerging technologies."[78] In the CLEC context, the

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[75] Verizon Comments at 11. Intrado addressed Verizon's aside to "call-sorting arrangements" in WC Docket Nos. 08-33 and 08-185, *Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Embarq");Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc. (collectively, "Verizon")*, Reply of Intrado Communications of Virginia Inc., 8, n. 8 (filed Jan. 29, 2009). Intrado stated: "It is important to note that Verizon requires the CLEC to route all 911 calls to the 'designated' selective router. This means the CLEC must sort its 911 calls in order to determine which Verizon selective router should receive the 911 call. Verizon requires this sorting of wireless carriers who need to complete their customer 911 calls to Verizon PSAP customers also. Thus, while Verizon and other ILECs complain they cannot sort their 911 calls without switching the call through their selective routers, they expect everyone else in the industry to do just that.").

[76] Noting that "The costs would not be duplicative since there is only one 9-1-1 service provider serving a given PSAP." 9IA Comments at 7, n. 20.

[77] *Id.* at 7-8. This is certainly true for Intrado provided 911 services over its Intelligent Emergency Network®. Service providers interconnecting at two points on the Intrado network will have redundant access to all PSAPs served by Intrado throughout the entire United States. Today, ILECs require interconnection at every ILEC selective router in every designated geographic service area of the ILEC. *See supra.* pp. 11-12. This can require a CLEC to have as many as 11 points of interconnection in one state for a single ILEC to complete only 911 calls to ILEC-served PSAPs. AT&T North Carolina Arbitration Transcript at 233-34.

[78] PUCO Comments at 8-9. The PUCO's conclusion concerning the centrality of meaningful, equitable interconnection arrangements to competitive 911/E911 services is wholly separate from its legal analysis of Intrado's amenability to such interconnection arrangements. "[I]n the arbitration proceedings between Intrado and the various dominant ILECs in Ohio," The PUCO determined that Intrado is a telecommunications carrier entitled to interconnection rights under Sections 251 and 252 from an assessment of 47 U.S.C. § 153 and Commission precedent concerning the rights afforded CLECs and the

Commission has specifically recognized that "commercial negotiations" (*i.e.*, a commercial agreement) would not be feasible given the ILECs' "incentives and superior bargaining power," and would ultimately fail to afford the interconnection necessary for competitors to "compete directly with the [ILEC] for its customers and its control of the local market."[79] Sections 251 and 252, intended to ensure that all competitors get access to the public switched telephone network ("PSTN") on equal terms, have ameliorated this disparity.[80] There is no reason to assume that the equalizing arrangements between CLECs and ILECs would not operate equally as well in the realm of competitive emergency telecommunications, which depends on access to all end users, including PSAPs, just as much as any other telephone service.[81]

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statutory purpose of 911 service. *Id.* at 6-7.

[79] *Local Competition Order* ¶ 15, 55.

[80] *Id.* at ¶ 167 (recognizing "Congress's stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms" and "ensur[ing] that such agreements do not discriminate against third parties"). Thus, contrary to Embarq, policy and interconnection matters must coexist in this proceeding. Embarq Comments at 4-5. "Policy benefits or drawbacks" such as reliability, routing and redundancy are directly relevant to defining the interconnection rights that Intrado is legally entitled to under the Act. *See also Coserv Limited Liability Corporation v. Southwestern Bell Telephone Company*, 350 F.3d 482 (5th Cir. 2003) (holding that "where the parties have voluntarily included in negotiations issues other than those duties required of an ILEC by § 251(b) and (c), those issues are subject to compulsory arbitration under § 252(b)(1). . . . Congress knew that these non-251 issues might be subject to compulsory arbitration if negotiations fail. That is, Congress contemplated that voluntary negotiations might include issues other than those listed in § 251(b) and (c) and still provided that <u>*any issue*</u> left open after unsuccessful negotiation would be subject to arbitration by the [state commission]") (emphasis in original). Interconnection with the public switched telephone network is vital to the provision of competitive 911 service and addressing issues of reliability, routing, redundancy, and the transition from a legacy network to an IP-enabled network

[81] Despite Verizon's claim that "all the state commissions that did not reject Intrado's petition outright and that did review Intrado's network architecture proposal have rejected it," (Verizon Comments at 10), the PUCO has embraced and extended Intrado's proposal in *four* separate decisions, including the decision concerning Verizon. *See In the Matter of the Petition of Intrado Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio dba Embarq and United Telephone Company of Indiana dba Embarq, Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Case No 07-1216-TP-ARB, Arbitration Award dated September 24, 2008 (Embarq Award) and Entry on Rehearing dated December 10, 2008 (Embarq Rehearing); *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of* 1934 *as Amended, to Establish an Interconnection Agreement with Cincinnati Bell Telephone Company*, Case No. 08537-TP-ARB, Arbitration Award dated October 8, 2008 (CBT Award) and Entry on Rehearing dated January 14, 2009 (CBT Rehearing); *In the Matter of the Petition of Intrado Communications Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of* 1934 *as amended, to Establish an Interconnection Agreement with the Ohio Bell Telephone Company dba AT&T Ohio*, Case No. 07-1280-TP-ARB, Arbitration Award dated March 4, 2009 (AT&T Award) and Entry on Rehearing dated June 17, 2009 (AT&T Entry on Rehearing); *In the Matter of the Petition of Intrado Communications, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Verizon*

Meaningful interconnection arrangements will not only "provide potential competitors with opportunities to interconnect with and make use of the [ILEC]'s network and services" in an equitable fashion[82] but will ensure the long-term stability, quality, and responsiveness of the country's 911/E911 systems to federal goals and local concerns, facilitating the transition towards a universal nationwide IP-based emergency communications system.[83] Intrado completely agrees with AT&T that "when the subject matter before the Commission is 911/E911 emergency network services and the life and property-saving missions those services support, public safety must take precedence over other interests."[84] The economic interests of the ILECs must yield to the necessity of affording Intrado physical interconnection arrangements with the PSTN equal to those ILECs have designed for themselves,[85] in order that increasingly "[r]obust,

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North Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, Case No. 08-198-TP-ARB, Arbitration Award dated June 24, 2009 (Verizon Award).

82 *Local Competition Order* ¶ 55.

83 AT&T claims that interconnection may disadvantage rural communities, in that "some market entrants may elect to cherry pick PSAP customers in comparatively low-cost, densely populated metropolitan (*i.e.* the most profitable) areas and leave the less profitable, sparsely populated, higher service-cost areas for the carriers of last resort ("COLR") - the ILECs." AT&T Comments at 11. Though Intrado plans to offer its services to PSAPs across the nation, nothing in the Act restricts competitive carriers from selecting particular markets to serve. The history of ILEC barriers to entry in rural markets suggests otherwise -- that though competitors are ready to serve, ILECs have blocked the benefits of competition from reaching rural customers. Indeed, Commission precedent demonstrates that it is the ILECs that have been loath to interconnect in rural markets since the beginning of competition in 1996. *See, e.g., Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, 22 FCC Rcd 3513, ¶ 15 (2007) (rejecting ILEC attempts to avoid Section 251 interconnection obligations to wholesale and rural telecommunications service providers). .

84 AT&T Comments at 3. While the Commission has taken notice of "known costs of unbundling, including reducing the incentives to invest in facilities and innovation and creating complex issues of managing shared facilities" - *Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, 20 FCC Rcd 2533, ¶ 44, n. 131 (2005) ("*Triennial Review Remand Order*") - the Commission has mandated unbundling "to encourage the rapid introduction of competition in all markets, including residential and small business markets. . . . creat[ing] incentives for both incumbents and requesting carriers to invest and innovate in new technologies." *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3696, ¶ 9 (1996) (subsequent history omitted).

85 For instance, in commercial negotiations, the pricing for ILEC facilities is unrestrained, collocation is generally not permitted, and physical interconnection arrangements are constructed to favor the ILEC. This disparity ultimately raises the total costs to public safety entities when they choose a competitive provider.

reliable, and resilient 911 and E-911 service" can be deployed as rapidly as possible.[86] For Intrado, connection to the PSTN is not merely about recouping a "substantial investment. . . . into building tomorrow's infrastructure," but ensuring that investment guarantees that the "technology for, and functionality of, 911/E911 services [will] continue to evolve, as rapidly as practicable, in order to meet needs and demands (of callers *and* responders) in such increasingly complex local, regional and national emergency response environments."[87]

III. THE COMMISSION SHOULD STRIKE THOSE COMMENTS THAT HAVE RAISED ISSUES BEYOND THE SCOPE OF THE PUBLIC NOTICE AND CONSOLIDATED ARBITRATIONS, AND AMOUNT TO UNTIMELY MOTIONS

Intrado has addressed the comments of Verizon and AT&T in the body of this Reply. Nonetheless, portions of those comments should be stricken as non-responsive to the subject matter of the Public Notice.

Stating that "the Bureau stands in the shoes of the Virginia Commission to consider solely the narrow question that was before that agency," Verizon argues that "Intrado's petition should be dismissed, or even if not dismissed, should be rejected."[88] The ensuing substantive arguments concerning the merits of Intrado's argument before the Virginia Commission, coupled with this statement, effectively transforms much of Verizon's reply into an out-of-time motion to dismiss.[89] Verizon also claims that ". . . this is not a proceeding about 911 competition."[90] In

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86 AT&T Comments at 3.

87 *Id*. at 5.

88 Verizon Comments at 2.

89 *See* 47 C.F.R. § 1.45(b) ("Oppositions to any motion, petition, or request may be filed within 10 days after the original pleading is filed."). The Commission granted Intrado's Petition for Preemption on October 16, 2008. *Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. and Verizon Virginia Inc.*, Memorandum Opinion and Order, 23 FCC Rcd 15008 (2008). Intrado responded to Verizon's Petition for Arbitration on January 9, 2009, and failed to include a motion to dismiss as part of it. WC Docket Nos. 08-33 and 08-185, *Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Central Telephone Company of Virginia and United Telephone - Southeast, Inc. (collectively, "Embarq")*; *Petition of Intrado Communications of Virginia Inc. for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended, to Establish an Interconnection Agreement with Verizon South Inc. and Verizon*

fact this matter *is* about competition, as a facial perusal of the Public Notice (or a glance at any of the comments filed in response to it) clearly indicates. Verizon's contentions about "Virginia's detailed statutory and regulatory regime" and repeated assertions about the "impropr[iety] [of] undertak[ing] the kind of general policy inquiry contemplated in the Public Notice as part of this arbitration proceeding" should be struck from the record as wholly unresponsive.[91]

AT&T's comments expressing its fear that non-facilities based service competition "chills investment and innovation . . . which is particularly detrimental to 911/E911, where substantial investment is needed to sustain a technologically complex communications evolution to NG9-1-1 service," and that unbundling will "shift significant costs to incumbents," limiting the prospects for "the substantial investment needed to promote and sustain the robust, resilient, and reliable 911/E911 network" are also unresponsive to the scope of this proceeding."[92] These arguments amount to a lengthy diatribe on AT&T's obligations to offer unbundled network services and pricing pursuant to Sections 251 and 252 of the Act. AT&T vividly depicts the pecuniary ramifications of "non-facilities-based competition in which state and federal regulators establish an unbundled, price-regulated regime for 911/E911 network services,"[93] without accounting for the fact that the core of its argument - the facilities-based distinction - is inapplicable to Intrado[94] and irrelevant to market clamor for competitive emergency

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Virginia Inc., Response of Verizon to Petition of Intrado Communications of Virginia Inc. (Jan. 9, 2009).

90 Verizon Comments at 9.

91 *Id.* at 3, 8.

92 AT&T Comments at 2, 7-8.

93 *Id.* at 2.

94 Contrary to AT&T's apparent conclusion, a leased capacity provider is a facilities-based provider under statute and precedent. *See* 47 C.F.R. § 63.09(a) ("Facilities-based carrier means a carrier that holds an ownership, indefeasible-right-of-use, or *leasehold interest* in bare capacity . . . .") (emphasis added); *Clarification of Section 43.61 International Traffic Data Reporting Requirements*, Public Notice, 13 FCC Rcd 12809 (rel. July 9, 1998) (adopting definition of facilities-based service as one "provided using channels of communication which the carrier owns; or in which the carrier has an ownership interest, such as an indefeasible right of use (IRU); or which the carrier leases . . . .").

telecommunications services.[95] Broad invective against the costs of compliance with unbundling obligations adds nothing to the Commission's inquiry in this matter, and should be properly relegated to a petition for forbearance under 47 U.S.C. § 160, or submitted for consideration in the ongoing *Triennial Review Remand* proceedings.

[95] AT&T has admitted that its monopoly control of 911 service has produced unfavorable returns. Docket No. 070736-TP, *Petition by Intrado Communications, Inc. for Arbitration of Certain Rates, Terms, and Conditions for Interconnection and Related Arrangements with Bellsouth Telecommunications, Inc. d/b/a AT&T Florida, Pursuant to Section 252(b) of the Communications Act of 1934, as amended, and Sections 120.80(13), 120.57(1), 364.15, 364.16, 364.161, and 364.162 F.S., and Rule 28-106.201, F.A.C.*, Hearing Transcript Vol. 2, 351 (July 10, 2008) ("911 is not typically a profitable service that attracts competitors"). AT&T's *own* lack of investment in the existing *facilities-based* 911 infrastructure is what has given rise to competition, its unsupported prognostications concerning the economic effects of allegedly non-facilities based competition notwithstanding.

CONCLUSION

Intrado urges the Commission to act in accordance with the majority of comments in this proceeding and remove any remaining barriers to meaningful and equitable competitive provision of 911/E911 services -- beginning with a prompt decision in the pending arbitrations granting Intrado Communications of Virginia Inc. interconnection and the other relief sought therein. Congressional intent and the public safety mandate an embrace of competitive emergency telecommunications services, and fully enabling services like Intrado's Intelligent Emergency Network® to begin to address the nation's many next-generation 911 needs.

Respectfully submitted,

INTRADO INC. AND INTRADO COMMUNICATIONS OF VIRGINIA INC.

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Dated: July 21, 2009

CERTIFICATE OF SERVICE

I, Matthew L. Conaty, certify that on this 21st day of July 2009, I served a copy of the foregoing Comments of Intrado Inc. and Intrado Communications of Virginia Inc. on the following via the method indicated:

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